United States Court of Appeals

for the Second Circuit

APPENDIX

76-2100

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UNITED STATES COURT OF APPEALS
FILED
OCT 14 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

B. GUSTAVE ZURAK, WILLIAM MC AULIFFE, SALVATORE ZAMBUTO, WILLIE MACK, BENJAMIN SANTIAGO, MARTIN HALPERN, on behalf of themselves and all others similarly situated, Plaintiffs,	:	
v.	:	75 Civ. 4018
PAUL J. REGAN, BENJAMIN WARD, RAYMOND DORSEY, WILLIAM BARNWELL, FRANK CALDWELL, MAURICE DEAN, MARTIN GILBRIDE, FRANK GROSS, ADA JONES, MILTON LEWIS, JOHN MANFUCCI, LOUIS PIERRO, JOHN QUINN, and ANGEL LUIS RIVERA, Commissioner of New York State Board of Parole, individually and in their officisl capacities, Defendants.	:	

BEFORE: HON. ROBERT L. CARTER, D. J.

New York, New York
December 22, 1975
10:00 A. M. - Room 705

APPEARANCES:

LEGAL AID SOCIETY, PAROLE REVOCATION DEFENSE UNIT
BY: NATALIE J. KAPLAN, ESQ.
GORDON J. JOHNSON, ESQ.,
DONALD H. ZUCKERMAN, ESQ., Of Counsel.

LOUIS J. LEFKOWITZ, ESQ.,
Attorney General, State of New York
ARLENE SILVERMAN, ESQ.
Assistant Attorney General

Interpreter: Juan Abrams (Spanish)

* * *

THE COURT: Let's proceed.

MS. KAPLAN: I would like to call Mr. Gustave Surak.

G U S T A V E Z U R A K, one of the plaintiffs, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. KAPLAN:

Q Mr. Zurak, were you at one time an inmate at the New York City Correctional Institutional for men at Rikers Island?

A I was.

Q Were you serving a definite sentence?

A Yes, I was.

Q How long was that sentence?

A One year.

Q When did you arrive at Rikers Island?

A About November 21, 1974.

Q Thank you.

Did you receive an orientation program sometime after your arrival in which conditional release was explained to you?

A Yes, I did.

Q Do you recall when that orientation program took place?

A I would say about five or six days after I was at Rikers Island.

Q Who conducted it?

A A parole officer and one of the -- another man pertaining to -- who told us how we are going to go about getting employment at Rikers Island and what we have to expect.

Q Were you told when you would be eligible for conditional release?

A Yes. The parole officer gave an orientation on it and he says that you have to have at least 60 days on Rikers Island before you can be released.

Q Did he specifically say at Rikers Island?

A At Rikers Island.

Q Was there any discussion about jail time served in detention facilities off of Rikers Island?

A No. We were given to understand that does not count. You have to have 60 days on the island.

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Q Were you told any criteria by which you would be evaluated for conditional release?

A Just as long as we had a place to live, employment and our record -- we had no infractions at Rikers Island at the time.

Q Were you given the opportunity to apply for conditional release at that time?

A Yes.

Q Did you apply?

A Yes. They gave us a sheet of paper, and one of the things, the main things on it, was if we made parole, we would be subject to be under their supervision for one year or two years.

Q Just answer my questions.

A Yes. I signed and handed it in.

Q Did you compute or estimate at that time what your date of eligibility would be?

A Yes, around January 22, 23, somewhere in that vicinity.

Q What was your understanding at that point of the procedures that you have to go through in order to be conditionally released?

A As I said, they gave us a yellow sheet of paper which we might sign at that time and give it back to the man

that was conducting the thing about parole, which I did at that time.

He also gave us two other sheets of paper which he says fill out at your convenience and you will be called by the parole board any day, by the parole officer any day and have this filled out.

Q Did you hear from the parole officer within a few days?

A No, Ma'am. I did not.

Q Did you hear from the parole officer by your eligibility date of January 20?

A No, I did not.

Q Did you do anything to communicate with him?

A Yes, I did. I wrote out an interview slip that I obtained from the dorm officer. On the way to the mess-hall they have interview boxes that you drop the slips in, which I proceeded to do exactly that.

Q Did the parole department respond to your slips?

A Yes, they did.

Q What happened?

A I was called by a Mr. Dorsey at the parole department. You want me to continue on that?

Q Yes. What happened when he called you?

A He called me and he says, "What's your problem"?

I says, "I would like to be put up for parole."

I says, "I haven't heard nothing from you people."

He says, "Wait a minute. Let me go and get your record."

He looked, he come back and he says, "Let me check again. We can't find your record."

Finally he found it. He sat down at the desk.

Q Excuse me, Mr. Zurak.

Was your application included within that file?

A No, it was not.

Q Would you explain that, please?

A He said it was lost.

Q Okay.

At that interview how long did he spend with you?

A About a half hour, three quarters of an hour, somewhere around there.

Q At that interview did Mr. Dorsey at any time show you the contents of your parole file?

A No, he did not.

Q Did he make any attempt to verify any of the information contained in it?

A No, he did not.

MS. SILVERMAN: Objection, your Honor.

THE COURT: The objection is sustained. I don't

know what that means. I don't know how the witness would answer it.

MS. KAPLAN: Your Honor, this questions goes directly to the need for --

THE COURT: I understand the question. I don't see how you can get any formal response from this witness from asking a question like that.

The objection is sustained.

MS. KAPLAN: Excuse me, your Honor.

(Pause.)

Q Mr. Zurak, did Mr. Dorsey review any of your files with you if he didn't show you the papers themselves?

A No, he did not. The only thing he told me is what was I charged with, and I told him.

Q Did he indicate any of the contents of your file?

A No, he did not.

Q Okay.

When you left Mr. Dorsey's office on that day, what was your understanding of the next step in the conditional release procedure?

A Mr. Dorsey said that he would put my papers in for parole and he begged -- he says that his secretaries don't work that fast, that it would take about three weeks.

Q Did he indicate that he would make any recommenda-

tion?

A Yes. He told me he saw no reason why I should not make parole. He would give his highest recommendation for it.

Q Was your file submitted in a couple of weeks?

A No, it was not.

Q How did you find that out?

A I ran into Mr. Dorsey on the way to the mess hall. I kept asking him what happened to my papers.

I ran into him on several occasions. One time he says to me that the papers are not in yet, he's waiting for the right commissioner so he could recommend me highly.

Another time he told me the parole board is not meeting at Rikers Island at this time, they are going to start meeting downtown.

Q To what place was he referring when he said "downtown"?

A I guess 100 Centre Street.

Another time he says to me -- finally he says to me, "I don't have no probation report on you on this case."

I told him -- I says I would submit my progress report from the federal case, which I did give him.

About a month later he kept calling my wife, my wife kept calling. He nevergave us a solid answer.

Finally one day I was called by the -- by his office

Q What happened when you were called by his office?

A They handed me a slip of paper that the parole board came to a decision.

THE COURT: What is the time between the interview and when you were finally called by his office? How much time? What is the date; do you recall?

THE WITNESS: Yes. I didn't get an answer from the parole people from about March 6th.

THE COURT: What is his name?

THE WITNESS: Mr. Dorsey.

THE COURT: You saw Mr. Dorsey.

When was that?

THE WITNESS: Around January, the beginning of January.

THE COURT: Then you kept running into him. You testified you went to his office.

When was that? Eventually you were called to his office.

THE WITNESS: I was called to his office on March the 6th.

THE COURT: All right.

MS. KAPLAN: I would like this marked as Plaintiff's Exhibit 1.

XXX (Plaintiff's Exhibit 1 marked for identification.)

Q Mr. Zurak, I would like you to examine this paper and tell me what it is.

A This is the piece of paper that was handed to me by Mr. Bard on approximately March 5 or March 6, somewhere around that area.

Q Will you identify Mr. Bard for the court. Who is he?

A Mr. Bard is one of the parole officers. I thought he was in court.

Q I don't believe so.

A He's one of the parole officers at the parole office in Rikers Island.

Q Would you leave the decision to the court.

A Yes.

MS. SILVERMAN: It's not in evidence, your Honor.

THE COURT: You were going to put it in evidence?

MS. KAPLAN: All right, your Honor.

THE COURT: I can read.

(Pause.)

MS. SILVERMAN: No objection, your Honor.

MS. KAPLAN: I would like the court to take judicial notice of the fact that the date at the top of this slip is March 3rd and that the period of time from January 20 to March 3 represents a period of 42 days.

(Plaintiff's Exhibit 1 for identification received in evidence.)

XXX

Q Did you ask the parole officer, Mr. Bard, for any explanation of why you had been denied conditional release?

A Yes, I did.

Q What did he tell you?

A His answer was --

MS. SILVERMAN: Objection, your Honor.

MS. KAPLAN: Your Honor, this goes directly to Mr. Zurak's right to notice and the due process right to reasons.

THE COURT: It's sufficient for you that he given no reason --

MS. KAPLAN: I can't hear you.

THE COURT: He was given no reason, I understand.

MS. KAPLAN: I believe that the testimony will disclose that there was some reasons given orally.

THE COURT: By whom?

MS. KAPLAN: Which were not committed to paper. I believe by the parole officer.

THE COURT: Given by one of the defendants?

MS. SILVERMAN: He's not a defendant, your Honor.

MS. KAPLAN: I believe that the testimony will ultimately disclose that some explanations were given, al-

though not committed to paper. I'm not sure --

THE COURT: Yes, but by whom? I don't know who is giving any explanation.

You want him to testify to what somebody told him. The state is objecting to it.

What is the connection with what anybody told him to the defendants?

MS. KAPLAN: I withdraw the question at this time.

Q Did you ask what information had been used in evaluating him?

A Yes, I did.

Q What were you told?

A I got no reply.

MS. SILVERMAN: Objection, your Honor.

Q When you left on that day, what arrangements had you made with parole office Bard?

A Mr. Bard says he will contact Mr. Dorsey and for him to call me.

Q Did you have the opportunity to talk to Mr. Dorsey?

A I did.

Q When was that?

A A day or two later.

Q Will you describe to the court what took place at that meeting?

A Yes. Mr. Dorsey was --

MS. SILVERMAN: Objection again, Your Honor.

MS. KAPLAN: This is part of the regular parole process at Rikers Island that we are trying to demonstrate.

THE COURT: Mr. Dorsey is who again?

THE WITNESS: He's a supervising parole officer at Rikers Island.

THE COURT: All right.

The objection is overruled.

Q Will you describe to the court what took place between you and Mr. Dorsey at that subsequent interview?

A I asked Mr. Dorsey what had happened. He shook his head and said, "I do not understand it. I gave you the highest recommendation there was for parole. I don't understand why you were denied."

"It seems," he says, "we ran into the wrong commissioner. There was only one commissioner there."

Q Did you ask whether you could appeal that decision?

A Yes, I did.

Q What --

A He handed me a piece of paper with Commissioner Regan's name on it. He says, "Write, but it won't do no good."

Q Did you write to Sherman Regan?

A Yes, I did. I had written to Mr. Regan.

Q Approximately what date was that?

A I had written to Mr. Regan prior to seeing the parole board, just prior, and I never received a reply from him.

Q Did there later come a time when you submitted an affidavit for a furlough at Rikers Island?

A Yes.

Q How did you apply?

A I went through the same procedure, filling out a request slip for an interview with the furlough committee.

Q What response did you receive?

A I was called one morning and then I was asked a few questions and went back in the afternoon in front of a committee of three.

Q What took place before that committee of three?

A They asked me as to when I wanted my furlough. I gave --

MS. SILVERMAN: I will object to what went on there, your Honor.

MS. KAPLAN: Your Honor, this testimony goes directly to the discovery of serious errors in Mr. Zurak's file which will later --

THE COURT: If you are going to discovery of

serious errors in his file, you are not going to get any proof of that by hearsay evidence.

MS. KAPLAN: I would like Mr. Zurak to testify as to what happened to him during that furlough --

THE COURT: What difference does it make? If you want errors in his file, tell us what the errors are.

Q Mr. Zurak, the court is willing to accept that there are errors found --

THE COURT: I am not willing to accept that. Obviously you have to prove that. You said that's what you wanted to prove. I can't accept it.

MS. KAPLAN: I would like a moment to confer with my co-counsel, please.

(Pause.)

Q Mr. Zurak, did you ever learn of mistaken information in your file?

MS. SILVERMAN: Objection, your Honor.

A I did.

THE COURT: He can say yes to that.

Q Can you describe the nature of the error?

A I was a sex maniac.

MS. SILVERMAN: Objection, your Honor.

THE COURT: He discovers errors in his file, Ms. Kaplan. I don't understand what the problem is. Did he see

them? If he saw the file and saw there were errors in it, are you attempting to tell us he heard from somebody else there were errors?

MS. KAPLAN: Your Honor, Mr. Zurak's suffered --

THE COURT: Wait a minute. Don't tell me that. Answer the question. I asked you a question. Answer that.

MS. KAPLAN: Will you repeat the question for me, your Honor.

THE COURT: Read it back, please.

(Record read.)

THE WITNESS: I saw it.

Q Were you shown the errors in your file?

A I was shown the errors.

MS. SILVERMAN: I object to that as conclusory. I think the question is what did he see.

THE COURT: Of course it it. I gather by the answer you were shown your files; is that correct?

THE WITNESS: The errors was shown to me.

Q What was it that you saw in the file?

A That particular incident, one incident where they had me marked down as John Zubak, alias Gus Zurak. He says, "You're a goddamn liar, you're a sex maniac. You were committed at Mattawan State Hospital."

I asked him if that was my record he had before him

and he said --

MS. SILVERMAN: Objection, your Honor, to what he said.

THE COURT: Who are you talking to?

THE WITNESS: Captain Carbetta who was the main man at the furlough committee.

THE COURT: The objection is sustained.

Q How was that interview concluded, Mr. Zurak?

A The interview was --

MS. SILVERMAN: Objection, your Honor.

THE COURT: The objection is sustained.

MS. KAPLAN: I will withdraw it.

Q Did you have occasion to discuss this incident with someone in the parole department?

A I did.

Q When was that?

A The same day.

Q How did that interview come about?

A I have to go there in order to wait for a bus to go back to my dorm in the parole office.

Q Who did you speak to?

A I spoke to Mr. Bard.

Q In mentioning this incident to Mr. Bard, what did he do?

A He called --

MS. SILVERMAN: Objection, your Honor. There is no testimony that he mentioned it.

MS. KAPLAN: That was my prior question. My question was, did you have occasion to discuss it with someone in the parole department. The answer I believe is yes.

THE WITNESS: Yes.

THE COURT: You want this man to testify, I gather, about everything that anybody ever told him in respect of this matter. Names are coming out here, I don't know who they are, what their relationship is to the defendants, whether or not I am able to admit the testimony because it is hearsay. Even if it is hearsay, because they are in some position of authority. I have no idea. I don't know what is going on, quite frankly. I think what you better do is to leave those questions alone until you have established some relationship of authority of these people that you want this man to tell us about. I don't knowwho these people are. I haven't the vaguest notion who these people are.

You are asking to tell what this person told you, what that person told you.

MS. KAPLAN: Your Honor, Mr. Zurak has testified that Mr. Bard was a parole officer who worked at Rikers Island complex. I believe he's an agent for Mr. Dorsey and

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of the state parole board.

THE COURT: All right, fine.

Q Did Mr. Bard examine your parole file at that time?

A Yes, he did.

Q What did he find?

MS. SILVERMAN: Objection, your Honor.

MS. KAPLAN: I will rephrase that question, your Honor.

Q What did he say once he had looked at your parole file?

MS. SILVERMAN: I object to that, if your Honor please.

MS. KAPLAN: May I ask for the basis of that objection?

MS. SILVERMAN: One, I think it's hearsay.

Secondly, I think that Mr. Bard was not in a position to make any decision as to whether Mr. Zurak was eligible for parole or not. It's sort of after the fact. I don't see what bearing it has on the issue as to when he was considered for conditional release from Rikers Island.

MS. KAPLAN: Your Honor, the eligibility for conditional release is not at all at issue. The question I am posing to Mr. Zurak is only concerned with what he knew of his parole file following the incident with the furlough

committee.

THE COURT: What I don't really understand frankly, what difference does it make? The complaint and the issue that you want to contest is that these people who are entitled to conditional parole were not given within the time limit set by the rules and regulations and, number two, they were given no reasons which they are required to do and I gather, number three, they were given no right to appear in person before the board. I don't see why you are struggling with all this hearsay gossip and so forth testimony in order to get that out. I don't understand that.

MS. KAPLAN: Your Honor, this testimony goes directly to the issue of the need for an appearance.

THE COURT: What difference does it make? The point is that you are not telling me that this man -- what we are going to have is going to be gossip. That is not going to help you to establish the need for him to appear, testimony that is going to be objected to because somebody told him this and somebody told him that, somebody said that about his file.

MS. KAPLAN: I think Mr. Zurak will ultimately be able to testify to statements that are clear admissions on the part of an agency of the parole board.

THE COURT: Frankly I don't understand what all

this is about. Why don't you get the agent in?

MS. KAPLAN: We did call the agent. I don't think he's arrived. I don't see him in court.

Mr. Zurak was present and the admissions were made to him. As far as I understand it, he's competent to testify to those admissions.

THE COURT: Admissions about what? You are telling me that some employee of the parole board can make statements that are going to be binding on the commissioner of parole?

MS. KAPLAN: I would expect it to be binding on the commissioners of parole.

THE COURT: Isn't that who you are suing? Isn't that who has ultimate responsibility?

MS. KAPLAN: That's correct. I believe that we have heard admissions from an agent of the board of parole that erroneous considerations went into Mr. Zurak's conditional release application.

THE COURT: How can they tell us what?

MS. KAPLAN: Admissions were made to Mr. Zurak that that was the case.

THE COURT: No, I don't believe you have established that anybody who you are going to call is going to be in a position to tell us that. I am not prepared to accept that.

MS. KAPLAN: I --

THE COURT: I am not prepared to accept it.

Move on.

BY MS. KAPLAN:

Q When was the next time you saw Mr. Dorsey, Mr. Zurak?

A About two days after I left the furlough board. That was around the end of April.

Q Omitting any discussion of his examination of your file -- don't talk about the examination of your file -- did he indicate any other recourse that either he or you might have at that time?

A Yes.

Q What did he suggest?

A He made me sit in his office while he went up to speak to Warden Cunningham and Captain Carbetta.

Q I mean recourse with regard to conditional release.

A He told me that he would resubmit me back to the parole board.

Q Did he ultimately resubmit your papers?

A No, he did not.

MS. SILVERMAN: I object to that question, your Honor, and ask that the answer be stricken.

THE COURT: I don't see how I can do that. If that is an objection or a motion, it is denied.

Q Can you tell me how you found out that he wasn't going to resubmit your papers?

A Yes. I saw Mr. --

MS. SILVERMAN: Objection, your Honor.

MS. KAPLAN: Your Honor, this goes directly to any appeal or recourse that a conditional release being denied might have.

THE COURT: All right. The answer is yes. Now he is going to tell us how he found out.

MS. KAPLAN: The answer is no, that he didn't re-submit --

THE COURT: The answer is yes, that he found out. You asked him did he find out, did he resubmit his papers.

MS. KAPLAN: Correct.

Q How did you find out that he didn't resubmit your papers?

A I saw Mr. Dorsey again. He told me at that time it's a waste of time, it will take two, three months before he gets an answer back from Albany, he says, and any way now, he says, they marked me organized crime.

Q Were you ever granted a hearing on the issue of organized crime?

A No, I never did. I had to go to court on it.

Q Did you ever hear from Mr. Dorsey again after that

time?

MS. SILVERMAN: Can we set a time or place or give it some relation --

THE COURT: We really ought to, Ms. Kaplan. Frankly, I don't know what you are doing. The last time I heard of time was in April of 1975.

Q Approximately what date was your meeting with Mr. Dorsey when you talked about his resubmitting the papers?

A I asked him on March the 6th when he saw him about resubmitting the papers.

Q When did you find out that they had not been re-submitted?

A About two, three weeks later after March 6th.

Q Okay.

Did you ever hear from Mr. Dorsey again?

A No, I did not.

Q Did you ever receive a response to your letter from Mr. Regan?

A No, I did not.

Q Thank you, Mr. Zurak.

MS. KAPLAN: I have no further questions.

MS. SILVERMAN: Just one or two questions.

CROSS-EXAMINATION

BY MS. SILVERMAN:

Q When did you write Mr. Regan?

A I wrote Mr. Regan somewhere in -- around February 10th, probably.

Q The beginning of February?

A February.

Q So you wrote Mr. Regan prior to your hearing about whether you had been granted conditional release or not; is that correct?

A Right.

Q When were you finally released from Rikers Island on this particular charge?

A I was ordered released by Judge Lowe to the Granada Program, which they released me about August the 18th.

Q Have you served your time in full by now then?

A I have served my full time at Granada, which was a month before my expiration.

MS. SILVERMAN: No further questions, your Honor.

THE COURT: What were you charged with?

THE WITNESS: I was charged with stolen property.

THE COURT: So that I gather that you were sentenced to a year; is that correct?

THE WITNESS: Yes, I was.

THE COURT: When were you committed, in September?

THE WITNESS: No, I was committed -- I was serving federal time at the time and I was brought down and sentenced on this.

THE COURT: When did you start serving your state sentence?

THE WITNESS: The state time I started November the 18th, I think it was, 1974.

THE COURT: You were on Rikers Island from November 18, 1974 until August; is that correct?

THE WITNESS: August.

THE COURT: In August you were --

THE WITNESS: Sent to the Granada house.

THE COURT: What is that?

THE WITNESS: It's a community center.

THE COURT: I see.

During this period of time that you were on Rikers Island, is it your testimony that you never met with any of the commissioners of parole?

THE WITNESS: Never outside of parole officer Mr. Dorsey, who was the supervisor.

THE COURT: You never met with Mr. Regan or any of that group?

THE WITNESS: No.

THE COURT: Never had a hearing before?

THE WITNESS: No, I never had a hearing before or appeared at the hearing.

THE COURT: All of your communications were with either Mr. Bard or Mr. Dorsey?

THE WITNESS: Yes.

THE COURT: Mr. Dorsey is the supervisor of parole at Rikers Island and Mr. Bard is a parole officer?

THE WITNESS: Right.

THE COURT: All right.

Thank you.

(Witness excused.)

THE COURT: All right. Call your next witness, please.

MARTIN HALPERN, having been called as a witness on behalf of the plaintiff, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. JOHNSON:

Q Mr. Halpern, are you presently incarcerated?

A Yes, sir.

Q Where at?

A New York City Correctional Institute for Men.

Q Is that on Rikers Island?

A Yes.

Q Are you serving a definite sentence?

A Yes.

Q How long is that sentence?

A One year.

Q When was that sentence imposed?

A May 5, 1975.

Q By which court?

A Queens Supreme.

THE COURT: What was your offense?

THE WITNESS: Violation of probation.

THE COURT: What was the offense other than probation? What was the underlying offense?

THE WITNESS: Sale of marijuana controlled substance.

Q When did you arrive at Rikers Island?

A April 30.

Q Which institution did you arrive at?

A C-74.

Q What is C-74?

A The adolescent retainment center.

Q When were you transferred to the New York City Correctional Institution for Men?

A On May 21.

Q 1975?

A Yes.

Q When were you first advised about conditional release by the correctional authorities?

A Two days after.

Q Two days after what?

A After my arrival at C-76.

Q What is C-76?

A That is the New York City Institute for Men, Correctional Institute for Men.

Q Who advised you about conditional release?

A We went down to orientation and they had a parole officer inform us about conditional release.

Q This parole officer was with the board of parole?

A Yes. Institutional Parole Officer.

Q What did he tell you?

A He was giving us the facts about if you are sentenced for more than 90 days or more you are eligible, telling us briefly what it was about. That's all.

Q Did he tell you how long a sentence you had to serve before you were eligible?

A Yes. You have to serve one year from the day they discharge you from the institution.

Q Did he tell you how much time you had to spend in an institution serving sentence before you would be eligible for conditional release?

A Yes. 60 days. After 60 days you are required to be seen after 60 days.

Q Did you apply for conditional release?

A Yes.

Q When was that?

A That day. That day he asked us to sign a piece of paper if we were interested. I signed it.

Q Did you hear anything concerning your application within 60 days?

A No.

Q After your arriving at C-76?

A No.

Q What did you do?

A Well, when the summer began, after my 60 days, July 1st, I started writing interview slips.

Q How often did you write interview slips?

A Every day.

Q And did you get any response to your interview requests?

A No response.

Q What did you do then?

A Well, I waited. People from home called up the institution, my attorney, friends wrote letters; I wrote letters through the mail. Nothing ever happened.

Q Did there come a time when you saw a parole officer?

A Once, going to eat I met a parole officer in the hallway.

Q Do you know who it was?

A No.

Q Did he identify himself as a parole officer?

A White man about 30, with glasses. Small. Very small. He was a parole man at the institution, one of them.

Q When did you met him in the hall?

A The first week of August.

Q What did he tell you?

MS. SILVERMAN: Objection, your Honor.

THE COURT: Sustained.

MR. JOHNSON: Your Honor, I think under rule 1--

THE COURT: Objection sustained.

Q Did you make any inquiries of that person you met in the hall?

A Yes. I asked him what's happening, I have been here for three and a half months, and I told him that I was accepted to college in September and I thought my required time was up after 60 days.

Q Did you ever get to see a parole officer concerning your conditional release application?

A Yes. The end of August. He told me my parole officer is on vacation --

MR. SILVERMAN: Objection, your Honor. Move to strike that.

THE COURT: When did you see the parole officer?

THE WITNESS: The last few days of August.

Q Who did you see?

A Mr. Mitchell.

Q Did he interview you?

A Yes.

Q How long did that interview take?

A 15, 20 minutes. 15 or 20 minutes.

Q Did he show you any of the records that were in your file?

A No.

Q Did he show you any of the contents of your file?

A No.

Q Did you ever appear before a parole board regarding your application personally?

A No.

Q Do you know whether your application did go to the board?

MS. SILVERMAN: Objection, your Honor.

THE COURT: He can answer that yes or no.

A He told me it's going --

THE COURT: No, just answer it.

A No.

Q You don't know whether it went to the board?

A He said as of September 2nd --

Q Did your application go to the board?

A Yes.

Q When?

A September 2nd.

Q Were you ever informed of their decision?

A Yes.

Q When was that?

A September 5th.

Q Who informed you of their decision?

A Mr. Mitchell called me down for an interview and told me I was deferred to November.

Q Did he tell you the reasons why you were deferred?

A He read off the folder that I was a discredit to the community.

Q Were there any reasons given for your decision in writing, to you?

A No.

Q Were you told whether you could appeal the decision?

A No.

Q At any time did you ever learn what contents were in your file, Mr. Halpern?

A Well, I knew that during the course of the summer I was --

MS. SILVERMAN: Objection, your Honor. It really calls for a yes or no.

THE COURT: I don't think he understood the question.

Q Did you ever learn what was in your pa[illegible] file?

A No.

MR. JOHNSON: No further questions.

CROSS-EXAMINATION

BY MS. SILVERMAN:

Q Mr. Halpern, you stated that you were received at some institution on April 30, 1975; is that correct?

A On the island, yes.

Q What was the name of that institution?

A C-74. It was the adolescent retainment center on Rikers Island.

Q And then at some subsequent date you went to a different institution within Rikers Island; is that correct?

A Yes.

Q Did you spend any time incarcerated prior to April 30, 1975?

A Yes.

Q You were?

A Yes.

Q I mean immediately prior?

A Yes.

Q Where would that have been?

A Nassau County Jail.

Q Other than this conviction for sale of marijuana, do you have any other convictions?

A Yes.

Q What other convictions do you have?

A Sales of marijuana.

Q How many such convictions would there be?

A One.

Q One prior to this one?

A Yes.

Q Were you incarcerated as a result of that conviction?

A No.

MR. JOHNSON: Objection.

THE COURT: He's already testified about that, that he was on parole, he was serving for violation of parole.

MS. SILVERMAN: I gathered there was also a prior conviction, your Honor.

I have no further questions, your Honor.

XXX BY THE COURT:

Q Are you still incarcerated?

A Yes.

Q When is the last time that you heard anything about your parole?

A On December 1st. They deferred me to November. December 1st they told me that I was given parole.

Q Are you on parole now?

A No, I refused it.

Q Why was that?

A Well, I have less than -- I had less than 75 days left, and I'd be out in time to start school in February. That is what I wanted the parole for.

Q What is the difference in terms of parole? You mean you'd have to serve time after your release?

A I would have to stay on it until next December 3rd, one year.

Q I gather from your testimony that you have no one at Rikers Island or anywhere else who's ever allowed you to look at what is in your file, the file that goes before the parole board; is that correct?

A Yes.

Q You don't know what is in it?

A Like I know --

Q I mean from your own knowledge, do you know what is in it?

A I submitted a few recommendation letters, I had people send in recommendation letters.

Q But as far as you know, you don't know whether those letters are in the file or not?

A Not all of them.

Q And you don't know whether what other information is in your file; is that correct?

A No, I don't know. I just know he has, I gave him personally an acceptance to college and that is the only thing I know that he definitely has.

Q You know that the parole officer has that?

A Yes.

Q But you don't really know whether or not -- you know that you gave that to a parole officer at one time, that is Mr. Mitchell; is that right?

A Yes.

THE COURT: Thank you.

MS. SILVERMAN: Your Honor, may I ask a few questions that your questions have engendered?

THE COURT: Yes.

CROSS-EXAMINATION

BY MS. SILVERMAN:

Q You said there was various letters that you had had submitted to the parole board. Who did you have submit such letters?

A Well --

Q Or recommendations, I think you called them.

A I had one letter from the postmaster of the post office that I was working in, that he told me he mailed it in --

Q Who did you ask him to mail it to, if you recall?

A I didn't ask him to mail it to -- he mailed it on his own will. He just mailed it.

Q But you did request it --

A No, I didn't request it.

Q But you learned subsequently that he had mailed such a letter?

A Yes.

Q Who else mailed any such letters, if you know?

A A letter given to me -- see, at one time at the beginning of my sentence I was studying all about conditional release. I was reading books about it because that was my thing on my mind.

Q You were quite familiar with the rules and regulations surrounding it then, I take it?

A Yes. I was getting letters from jobs that I could have had on the street, from personal friends.

Q So you requested these people to write letters on your behalf then, is that correct?

A Requested yes, I --

Q Fine. Who did you ask them to write the letter to?

A They addressed them all to me.

Q To you direct?

A Yes.

Q Then what did you do with the letters as you got them?

A I wasn't able to get in touch with Mr. Mitchell, so I had my rehabilitation officer, a Mr. Frost, make carbon copies of all of them, and their offices are right next door.

So he said he will make sure Mr. Mitchell gets it.

MS. SILVERMAN: No further questions, your Honor.

THE COURT: Thank you.

(Witness excused.)

THE COURT: Call your next witness.

MS. KAPLAN: I would like to call as my next witness, Mr. Benjamin Santiago and an interpreter for him, Mr. Juan Abrams.

J U A N A B R A M S, Interpreter, was duly sworn.

B E N J A M I N S A N T I A G O, having been called as a witness on behalf of the plaintiffs, was duly sworn (through the Interpreter) and testified as follows:

DIRECT EXAMINATION

BY MS. KAPLAN:

Q Mr. Santiago, are you presently serving time in a New York City Correctional Institution?

A Yes.

THE COURT: I gather he understands some English.

Q Where are you incarcerated?

A Rikers Island.

Q Are you serving a definite sentence?

A Yes.

Q What is that sentence?

A A year.

Q When were you first incarcerated on this charge?

A June 30, 1975.

Q When did you arrive at Rikers Island?

A The same day.

Q Were you given an orientation program relating to conditional release, sometime after your arrival at Rikers Island?

A Yes.

Q Do you recall when it took place?

A Two or three days after arrival in the institution.

Q Who presented that program?

A Mr. Wiesc, an officer of the program, the parole board.

Q Is Officer Wiesc a part of the parole department?

A Yes.

Q Were you told the date when you would be eligible for conditional release?

A Yes. They told me after 60 days.

Q Did they give you an exact date?

A No. They just told me that I was eligible after 60 days.

Q Did you compute this date either at that time or at sometime afterward?

A Yes.

Q What was the date you arrived at?

A August 29.

Q Were the criteria for granting conditional release explained to you?

A Yes.

Q Were you given the opportunity to apply for conditional release, at that orientation program?

A Yes.

Q Did you apply?

A Yes.

Q When you left that program what was your understanding of how your application would be processed?

MS. SILVERMAN: Objection, your Honor?

Q When you left that program was it your understanding that you would have to contact the parole officer?

MS. SILVERMAN: Objection.

Q I will rephrase that question. When you left the program that day, how were you supposed to proceed with your conditional release application?

MS. SILVERMAN: Objection.

MS. KAPLAN: Your Honor, I am trying to have the witness testify as to the procedures used.

THE COURT: Are you going to stay with that question?

MS. KAPLAN: I will go on, your Honor.

Q Did you hear from the parole department within 60 days of that program?

A Never heard from them.

Q Did you make any attempt to communicate with them after the 60 days had passed?

A Yes.

Q What did you do?

A I sent an application which is called interview slip.

Q Did you send more than one interview slip?

A I sent between 5 and 7.

Q And did you receive any response to the interview slips?

A None.

Q Did you take any further action to contact the parole department?

A I contacted an employee of Legal Aid Society, who tried to get in contact with the parole officer, and he couldn't in --

MS. SILVERMAN: I will object to that latter part of the answer, as not responsive.

THE COURT: Sustained.

Q Did you take any further steps to contact the

parole department?

A Yes. Because the attorney couldn't get in contact --

MS. SILVERMAN: Objection, your Honor. The answer again is not responsive.

Q Did you eventually get through to the parole department?

MS. SILVERMAN: Objection, your Honor.

THE COURT: The only thing you are objecting to is as to form. That is certainly a valid objection, but let's hear it anyway. When did he get in touch with his parole department, if at all.

A November 16.

Q Did you subsequently receive an interview?

A Yes.

Q How long after you made contact did you receive an interview?

A A week later.

THE COURT: What happened on November 16?

THE WITNESS: I went for an interview on November 16.

THE COURT: With whom?

THE WITNESS: Mr. Wiesc.

Q Did you ask why you were delayed beyond your date of eligibility?

THE COURT: Wait a minute. Let me find out something.

You had an interview with Mr. Wiesc on November 16, and you said something else happened a week later. What was that?

THE WITNESS: After some guidance counselor called, a week later I was able to get in contact with the parole officer.

THE COURT: I am confused. You were interviewed on the 16th?

THE WITNESS: After a counselor contacted the parole officer, I was able to get the interview on November 16.

THE COURT: So that the interview we are talking about is on November 16 and you got in touch with the parole board then about a week before that; is that correct?

THE WITNESS: First I tried to get help from the attorney. The attorney couldn't contact them. Then I proceeded to contact the counselor.

THE COURT: I understand. All right, Ms. Kaplan.

Q Would you tell the court who conducted the interview?

A The same officer who gave the orientation program, Officer Wiesc.

Q Did you ask why you had been delayed?

A I didn't ask.

Q I beg your pardon?

A I did not.

Q What took place at that interview?

A He asked me a few questions.

Q What questions did he ask you?

A He asked me why did I want to get a conditional release, and I told him that I have a family and that I wanted to attend school, and that I was attending school; that I was finishing an accounting course and I have plans to enter college. Also that the doctor found out that I had a cardiac condition and that I had to be under medical observation constantly.

Q What kind of medical observation was necessary?

MS. SILVERMAN: Objection, your Honor.

THE COURT: I don't think that has anything to do with the issue, does it?

MS. KAPLAN: Your Honor, this testimony is directly related to the injury that the plaintiffs and the plaintiff class suffers by the delays.

THE COURT: How? Are you claiming that there is a class of people in this connection with Mr. Santiago who have have cardiac conditions? Is that what you are talking about?

MS. KAPLAN: I think that there is a class of people that has special consideration that may be marked for expeditious treatment where their lives may be involved.

THE COURT: I can understand that, but it doesn't seem to me that you have to prove that. Do you have to prove that in this case? I thought the issue was that these people were entitled to have theirapplications for parole conditions considered within the 60 day period. And if they were turned down, the reason be given to them as to why they were turned down.

MS. KAPLAN: But it is also my understanding that the injuries to plaintiff would be one consideration in determining what kind of remedy should be fashioned.

THE COURT: The injury to the plaintiff is that freedom has been denied. Isn't that sufficient? In our system that seems to be a very gross injury.

MS. KAPLAN: I will accept that, your Honor.

Q Did the parole officer have your file, Mr. Santiago, during that interview?

THE COURT: I am sorry. Ms. Kaplan and I had quite a long exchange and I don't know whether Mr. Santiago understood what's gone on. He should be advised of it.

THE INTERPRETER: Your Honor, do you want me to explain the dialogue?

THE COURT: He should know everything that is going on. So I would suggest that you just summarize it.

(Pause.)

Q Did the parole officer have your file during the interview, Mr. Santiago?

A Yes.

Q Did he consult it during the interview or did he read it?

A No.

Q Did he ask you about anything contained in it?

MS. SILVERMAN: Objection.

THE COURT: Overruled.

A He spoke about this case, the one that I am serving this sentence.

Q Did you have the opportunity to see anything in your file?

A Nothing.

Q When you left that interview what were your instructions about when a determination would be made?

MS. SILVERMAN: Objection.

THE COURT: Sustained. Ask him was he given any time.

A Yes.

Q What were you told?

A Three weeks.

Q Mr. Santiago, were you granted conditional release?

A No.

Q Were you denied conditional release?

A Yes, because I didn't hear yet from them.

Q Do you know how many days it's been since you were eligible for conditional release?

MS. SILVERMAN: Objection.

THE COURT: Why do you have to ask questions like that? That is a sheer waste of time.

MS. KAPLAN: I will withdraw the question, your Honor. No further questions.

THE COURT: If it is 60 days and he went in June 30, then you can count and I can count.

BY THE COURT:

XXX

Q Mr. Santiago, what are you serving time for?

A Attempted assault.

CROSS-EXAMINATION

XXX

BY MS. SILVERMAN:

Q Do you have any other prior convictions?

A Just one.

Q For what?

A Possession of a weapon, a pistol.

Q As a felony or as a misdemeanor?

A Misdemeanor.

Q Did you serve any time pursuant to that conviction?

MR. JOHNSON: Objection.

THE COURT: What is the objection?

MR. JOHNSON: She is going into the facts of the conviction.

THE COURT: She just asked did he serve any time.

Q Did you serve any time pursuant to the conviction?

A Yes. Three years on probation.

Q During that time did you violate probation?

A Yes.

Q What was the year of that conviction?

MR. JOHNSON: Objection, your Honor. She has the facts of the conviction out and I don't think there has to be any further detail on it.

THE COURT: Quite frankly, ladies and gentlemen, I don't know, is it the purpose in asking these questions to the issue of whether or not he is in fact eligible for 60 days conditional release?

MS. SILVERMAN: No, your Honor. They testified at great length about the orientation program and whether he did or did not know about the conditional release. I am trying to establish if he ever served any time at Rikers Island.

THE COURT: Why don't you ask him that.

MS. SILVERMAN: First I want to establish the year, because this program didn't go into effect until '67.

Q May I just have the year of the conviction?

A 1965.

Q You testified that your probation was revoked at some point. Were you then incarcerated on Rikers Island pursuant to that revocation?

MR. JOHNSON: Objection, your Honor. I don't see the relevancy of that. Mr. Santiago's testimony did not go to a denial of conditional release back in 1966, '67 and '68.

THE COURT: I gather that is correct. If there is no issue here in regard to a prior conviction or parole that is making him eligible for conditional release, then we are wasting our time.

MS. SILVERMAN: I wanted to see if he served any time at Rikers Island between September 1, 1967 and the time of his conditional release.

Q Have you served any time exclusive of this conviction at Riker's Island subsequent to September 1, 1967, or any other local penitentiary?

MR. JOHNSON: Your Honor, I object further. I think what counsel is trying to do is to establish that Mr. Santiago might have had some personal knowledge of the con-

ditional release program sometime in the past. I don't think that is relevant to this proceeding.

THE COURT: I don't know, but answer the question.

A This is the first time that I have been incarcerated.

THE COURT: I think he misunderstood your earlier question. He was on parole for three years, I think he probably misunderstood what you meant by violation.

MS. SILVERMAN: No further questions.

THE COURT: Thank you. We will take a ten minute recess.

(Recess.)

THE COURT: Call your next witness.

S A L V A T O R E Z A M B U T O, having been called as a witness on behalf of the plaintiff, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. JOHNSON:

Q Mr. Zambuto, you are presently incarcerated at the New York City Correctional Institution for Men serving a definite sentence?

A I am, yes.

Q How long is that sentence?

A One year.

Q When were you convicted?

A April 8, 1975.

Q Before you were convicted did you serve any time in a New York City Correctional facility as a result of the charges that were disposed of on April 8, 1975?

A Yes, I did.

Q How long?

A Sixteen days.

Q When did you get to Rikers Island?

A April 11.

Q Before that time were you ever advised concerning conditional release for inmates by correctional authorities?

A No, I wasn't.

Q When were you first advised of conditional release?

A About a week after I arrived at Rikers Island.

Q Who advised you?

A There was a parole officer down at the orientation program.

Q What did he tell you?

A He told me and a bunch of other fellows that were there we'd be eligible for CR within 60 days of our arrival on the island.

Q Did you apply for conditional release?

A Yes, I did.

Q When was that?

A That day.

Q Were you ever called for an interview with regard to your application?

A Yes, I was.

Q When was that?

A I believe it was about the last week in April.

Q How long did that interview last?

A Twenty to thirty minutes.

Q With whom was the interview conducted?

A Mr. Bard.

Q Did you hear anything about your application for conditional release within 60 days?

A No, I didn't.

MS. SILVERMAN: Objection, your Honor. 60 days from what?

Q 60 days after your arrival on Rikers Island?

A No, I didn't.

Q When did you next hear about your conditional release application from any correctional or parole authority?

A I next heard when I had dropped in interview slips to the parole board asking -- the parole department on Rikers, asking for an interview about my papers.

Q When was that?

A That was about the middle of June.

Q How often did you drop interview slips?

A I dropped about three or four interview slips because I was told if you don't keep dropping them you won't be called down there.

Q Were you ever called?

A Yes, I was.

Q When was that?

A Oh, about a week after I started dropping the slips down.

Q What month was that?

A June.

Q About what date in June, do you remember?

THE COURT: He said mid June.

A Around the 15th, I'd say.

Q Who did you see at that interview?

A I seen Mr. Dorsey.

Q What did Mr. Dorsey tell you?

A I told Mr. Dorsey that I was interviewed for parole at the end of April and I was told them I would be eligible for parole in 60 days and I could be out by the beginning of June, and since I hadn't heard anything I wanted to know what happened to my papers.

He told me to wait a minute while he went down to

get my file. He came back with my file and he told me it was a good thing that I had come down because my papers were on the bottom of the file, they weren't even processed yet, and they probably wouldn't be processed for a while.

Q At that interview with Mr. Dorsey did he show you the contents of your file?

A No, no, he didn't.

Q Let me for a moment get back to that interview with Mr. Bard that was in late April, that you testified to.

During that interview were you shown the contents of your file?

A No, I wasn't.

Q Was your application for conditional release ever acted on?

MS. SILVERMAN: Objection.

THE COURT: He probably can't answer that question.

Q Did you ever receive a decision on your conditional release application?

A Yes, I did.

Q When was that?

A I believe it was July 10.

Q What was that decision?

A Denied.

THE WITNESS: That was what date?

THE WITNESS: July 10.

XXX (Plaintiff's Exhibit 2 marked for identification.)

4 Q Mr. Zambuto, I show you Plaintiff's Exhibit 2 for identification. What is that.

A That's my denial from the parole board.

MR. JOHNSON: I will offer this.

MS. SILVERMAN: No objection.

THE COURT: Received.

XXX (Plaintiff's Exhibit 2 was received in evidence.)

Q Mr. Zambuto, were you ever told in writing the reason why you were denied conditional release?

A No, I wasn't.

Q After you were denied conditional release did you have any further conversations with Mr. Dorsey?

A Yes, I did.

Q When were those?

A Well, the first conversation I had was when he handed me the paper. He said he was going to put me on hold and call me down because he wanted to talk to me about my case.

Q Did he talk to you about your case?

A Yes, he called me down about a week and a half later.

Q What happened then?

A He told me he didn't understand why I was denied

and I asked him for a reason. He said he didn't have no reasons. The parole board had reasons, but they weren't giving none out.

He said he couldn't understand why I was denied because I had, in his words, I had what the parole board wanted. I had a job waiting, I had a family waiting that cared, I had letters of recommendation in my file, and I was going to resubmit my papers with his recommendation to go before the parole board so that I should be reviewed for parole.

Q Did you receive any notification of a reconsideration decision?

A No.

Q Did you ever find out what happened to your application?

A I asked the CO that I worked for, correction officer on Rikers Island, to call up the parole board for me to see, find out what happened to my papers. He told me they told him my papers weren't going to go into the parole board because they tell them not to send them up, because the original decision stands.

Q You testified that Mr. Dorsey stated that he would put in a recommendation on your behalf. Did Mr. Dorsey tell you what value that recommendation would have?

A He told me not to count too highly on it because his word didn't carry too much weight with the parole board.

MR. JOHNSON: No further questions.

CROSS-EXAMINATION

BY MS. SILVERMAN:

Q Mr. Zambuto, are you currently incarcerated at Rikers Island?

A Yes, I am.

Q For what crime are you serving time?

A Excuse me?

Q What is the crime for which you are incarcerated?

A Sale of a weapon.

Q Do you have any prior convictions?

A I have a suspended sentence for simple assault, back in '65 or '66, I think it was.

Q That was the only prior?

A Yes.

MS. SILVERMAN: No further questions, your Honor.

THE COURT: All right. You may step down.

(Witness excused.)

MR. JOHNSON: Call Maitland Jones.

M A I T L A N D J O N E S, having been called as a witness on behalf of the plaintiff, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. JOHNSON:

Q Mr. Jones, are you presently incarcerated at the New York City Correctional Institution for Men?

A Yes.

Q On a definite sentence?

A Nine months.

Q Are you presently incarcerated at the New York City Correctional Institution for Men?

A I am.

Q And you are serving a definite sentence?

THE COURT: Nine months, he said.

A Nine months.

Q When were you sentenced?

A June 5 and June 9.

THE COURT: June 5 and June 9? You mean you were sentenced twice, Mr. Jones?

THE WITNESS: I was sentenced twice.

Q In addition, were you also sentenced on August 27, 1975 to a term?

A Of three months, running consecutively.

Q The June 5th sentence, how long was that?

A Four and six months running concurrently.

Q That is the June 5 and the June 9 sentences?

A Right.

Q When did you arrive at Rikers Island?

A June 11.

Q Is that the date you arrived at Rikers Island or the date that you arrived at the New York City Correctional Institution for Men?

A New York City Correctional Institution for Men.

Q Had you been on Rikers Island before then?

A Since May 13.

Q Did you ever make bail on your cases?

A No.

Q When were you first told about conditional release, Mr. Jones?

A Three days after I was in C-76.

Q Who told you about it?

A Parole officer.

Q When was that?

A In the orientation.

THE COURT: When was that? I'm confused. Was that in June or was that in May?

THE WITNESS: In June.

Q Was that the orientation at the New York City Correctional Institution for Men, C-76?

A Right.

Q At that orientation what were you told by the parole officer?

A I was told I was eligible for parole within 60 days.

Q Did you apply for parole at that time?

A I did.

Q Did you apply for conditional release at that time?

A I did.

Q Did you hear anything within the next 60 days after you made your application?

A No.

Q Did you make any inquiries?

A Yes, I submitted a couple of interview slips.

Q When did you put in the slips?

A One in June and one in July.

Q To whom were the slips directed?

A To the parole division.

Q Did you get any response in July?

A No.

Q What did you do then?

A I saw Mr. Dorsey in August in the hall of C-76 and

confronted him with this matter, and he told me that they had a backlog of cases and they would get to mine as soon as possible.

Q Have you ever been interviewed for conditional release?

A Not since orientation.

Q Have you ever received a personal interview concerning your application for conditional release?

A No.

Q Have you been denied conditional release?

A No.

Q Have you been granted conditional release?

A No.

Q Mr. Jones, do you have a felony conviction?

A Yes.

Q What were you convicted of?

A Possession of drugs.

Q By which court?

A Manhattan Supreme.

Q Did you do time in a state correctional facility as a result of that conviction?

A I did.

Q Did you serve an indeterminate sentence?

A One year six months to two years.

Q While you were serving that indeterminate sentence did you have occasion to appear before the parole board?

A I did.

Q What was the purpose of that appearance?

MS. SILVERMAN: Objection, your Honor.

THE COURT: What has this got to do with this case?

MR. JOHNSON: Your Honor, what I am trying to show is that Mr. Jones in the past has had personal appearances before the parole board, and since the question of the burden of any sort of administrative burden which is made against the value of the right and the injury suffered by the plaintiff class --

THE COURT: I don't think you have to struggle to establish that. I'm sure that Mr. Jones' previous situation, whether or not he had a right to personally appear before the board, if that is the procedure, I am sure, Ms. Silverman will concede it. If she didn't, I would require her to. There is no need to prove what you don't have to.

MR. JOHNSON: Your Honor, what I am trying to show goes a bit beyond that. I think Mr. Jones, if he were testifying in this matter, would testify that at that appearance he had a chance to present his case, to talk to the board members, and that was essential.

THE COURT: That appears to me to be argument.

The issue that you are trying to establish is that he ought to have the right of a personal appearance. I would assume that if you appeared personally, what you do with it is a matter of the individual. I don't think you need to establish that.

MR. JOHNSON: In our papers we raise an equal protection claim as well. I think that therefore there should be some evidence before the court concerning what occurs at a personal appearance which is granted to inmates serving indeterminate sentences.

THE COURT: I would think that you and Ms. Silverman ought to be able to work out a stipulation, as to one, that there are people in other situations who do appear before the parole board; what their rights are, and so forth. I don't think you have to establish that by testimony of this witness.

MR. JOHNSON: If that would be agreeable to Ms. Silverman.

MS. SILVERMAN: A great deal of this is already set forth in the statute and regulations.

THE COURT: I don't see the need for us to establish state procedure through testimony. You get the stipulation and you can agree to it and make it a part of the record.

One thing I don't understand, Mr. Jones. Am I to

understand that you were sentenced on three separate offenses, on June 5th, June 9th and August 27th?

THE WITNESS: Right.

THE COURT: What were they?

THE WITNESS: One June 5th and June 9th, four and six months to run concurrently.

THE COURT: On what?

THE WITNESS: Assault.

THE COURT: What was August 27?

THE WITNESS: August 27 was assault, three months running consecutively.

Q Have you made any other applications, Mr. Jones, for any other institutional programs or benefits at Rikers Island?

A A furlough.

Q When did you apply for a furlough?

A The first week in November.

Q What was the result of your application?

MS. SILVERMAN: Objection, your Honor.

THE COURT: Just ask him what happened.

Q What happened?

A I was turned down.

Q Why were you turned down?

A They said I had an alcoholic problem.

MS. SILVERMAN: Objection.

THE COURT: How did you learn that?

THE WITNESS: On a piece of paper submitted to me.

THE COURT: Do you have that piece of paper?

THE WITNESS: No.

Q What happened to that piece of paper?

A I don't recall.

Q Do you have it in your possession now?

A No.

Q Do you know of any way that you could get it?

A No.

MR.JOHNSON: I think Mr. Jones can testify now that the original has been lost.

THE COURT: He just testified.

MR. JOHNSON: He can testify as to what was on that paper.

THE COURT: He just told us he has an alcoholic problem.

Q Do you have an alcoholic problem?

A No.

MS. SILVERMAN: Objection.

THE COURT: Overruled. What else was on the paper?

THE WITNESS: That was all.

THE COURT: How did you know where it came from?

THE WITNESS: It said furlough committee.

THE COURT: When did you receive it?

THE WITNESS: The third week in November.

THE COURT: How was it delivered to you?

THE WITNESS: By mail, through the mail.

THE COURT: Through the ordinary mail?

THE WITNESS: Yes.

Q Mr. Jones, did you appear personally before the furlough committee?

A No, I did not.

MR. JOHNSON: No further questions.

MS. SILVERMAN: Just one, your Honor.

CROSS-EXAMINATION

BY MS. SILVERMAN:

Q Mr. Jones, you testified you have a prior felony conviction for possession of drugs. Other than that conviction do you have any other prior felony conviction?

A No.

Q Misdemeanor conviction?

A Yes.

Q Other than the one you enumerated here?

A Yes.

MR.JOHNSON: Objection, your Honor. Misdemeanor convictions don't come in to impeach the credibility of a

witness unless they go to moral turpitude.

THE COURT: I don't see what the purpose is.

MS. SILVERMAN: Again, your Honor, I am just trying to establish he had been a prior time at Rikers Island. If he had been and was incarcerated there and had applied for conditional release at a prior time, it would show a state of knowledge about the program.

THE COURT: I don't think that helps the state at all.

MS. SILVERMAN: Frankly, your Honor, I'm not going to pursue it. It really doesn't matter that much.

THE COURT: All right.

XXX BY THE COURT:

Q Were you ever during the nine month period, was your file, the file the parole authorities have, was that discussed with you?

A No.

Q Did you ever see anything in it?

A No, sir.

Q You never had any discussion with any of the parole officers?

A No, sir.

Q The only thing, your testimony is, when you came there sometime in June, about a week after you arrived on

June 11, --

A Right.

Q -- you had an orientation program and you haven't heard anything about it since?

A No, sir.

THE COURT: Thank you very much.

MS. KAPLAN: Mr. Willie Mack.

W I L L I E M A C K, having been called as a witness on behalf of the plaintiff, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MS. KAPLAN:

Q Are you currently serving a definite sentence at Rikers Island?

A Yes, I am.

Q How long is that sentence?

A One year.

Q When did it begin?

A April 18, 1975.

Q Were you given an orientation program concerning conditional release --

THE COURT: What's it for? We might as well get that. I'm always going to ask that question. I don't under-

stand why we don't get it out of the way now.

Q What were you sentenced for on April 18?

A For two weapons they found in a building I owned.

Q Were you given an orientation program concerning conditional release sometime after your arrival at Rikers Island?

A Yes, I was.

THE COURT: When did you arrive at Rikers Island?

THE WITNESS: I arrived at Rikers Island the 23rd of April.

MS. SILVERMAN: Excuse me, your Honor. Is the witness reading from something?

THE WITNESS: Only a calendar.

Q Where did you spend the four days or five days between April 18th and April 22nd?

A In the Brooklyn House of Detention for Men.

Q Do you recall who conducted the orientation program at Rikers Island?

A It was a parole officer. I was told his name was Mr. Spencieri.

Q Were you given the opportunity to apply for conditional release at that time?

A Yes, I was.

Q Did you apply at that time?

A Yes, I did.

Q Were you told at that time on what date you would be eligibile for conditional release?

A He said 60 days after I arrived at the institution, Rikers Island institution.

Q Was there any discussion of jail time?

A No, there wasn't.

Q Did there come a time when you applied for a special work program from Rikers Island?

A Yes.

Q Did it require your living off Rikers Island?

A Yes, it did.

Q Was any information given at the orientation program concerning such work programs and the process by which you would be considered for conditional release?

A Yes.

THE COURT: I don't understand. That is two questions. I don't understand what you are talking about. Are you talking about a work program, or are you talking about conditional release, or are they one in the same?

Q Would you explain the work program for the court?

THE COURT: I am not sure I want the work program explained. I want you to clarify the question.

Q Let me begin again.

Mr. Mack, was any information given to you at the orientation program concerning a work detail off of Rikers Island?

A Yes.

Q Will you explain what that information was?

A There was a question asked, if you go into the jails to work would you still be eligible for conditional release, and he said yes. And I applied to the Brooklyn House of Detention.

Q Did you ultimately go to the Brooklyn House of Detention?

A Yes, I did.

Q When did you go?

A I think it was the 20th of April, the following Thursday.

Q How long were you there?

A Until the last week in May.

Q During the time you were working at the Brooklyn House of Detention did you receive any communication from the parole officer at Rikers Island?

A No, I did not.

Q Were you able to contact him?

A No.

Q Did you finally leave the Brooklyn House of Deten-

tion?

A Yes, I did.

Q Why did you leave?

A I have an ulcer and the physicians there wasn't able to equip me for the medication what I needed for my ulcer pain.

Q Where did you go from Brooklyn?

A Back to Rikers Island.

Q What was the approximate date you returned to Rikers Island?

THE COURT: He said he was there until the last week in May, at the Brooklyn House of Detention. He already testified to that. And then he went to Rikers Island.

Q When you returned to Rikers Island, did you receive any communication from your parole officer?

A No, I did not.

Q Did you receive any communication from him by your eligibility date?

A No, I did not.

Q Did you attempt to communicate with the parole department in any way?

A Yes, I did.

Q What response did you receive?

A I got some interview papers from the correctional

officer and filled them out to the parole officer, and never got a response from them.

Q Did you eventually make contact with your institutional parole officer?

A Yes, I did.

Q How did that happen?

A I was coming back from chow one afternoon and I saw Mr. DiSpencieri walking down the corridor, and I spoke to him about my conditional release, and he asked my name and my number and what date did I come to the island, and I told him. And he said the file must have gotten lost some place, that he would put me down for an interview.

MS. SILVERMAN: Objection. That latter part was unresponsive, your Honor. I ask that it be stricken.

THE COURT: That is denied. I think the response is complete. The motion is denied.

Q Did Mr. DiSpencieri later call you for an interview?

A Well, I was called for an interview, but I didn't talk to Mr. DiSpencieri.

Q Who called you for an interview?

A I talked to a fellow, I was told his name was Mr. Hardy, a parole officer.

THE COURT: When was this?

THE WITNESS: This date was July 8.

THE COURT: You were interviewed July 8th?

THE WITNESS: Yes.

Q What did you discuss with him at that time?

A Well, he had my records there and the most he was discussing was two convictions I had with the federal government; one for conspiracy of drugs and one for failing to file income tax forms, which is total of four years.

Q Did he ask you anything about your New York State conviction, the one you are serving time for at Rikers?

A He did not.

Q Did he show you your file?

A No, he did not.

Q Did he tell you what was in that file?

A No, he did not.

THE COURT: He must have told him something was in the file, Ms. Kaplan. He discussed with him, he just said he discussed two prior federal convictions. He had the file before him.

Q Did he discuss the federal convictions based on information in the file or did he ask you to offer the information?

A From what he was reading he was asking me questions about my federal institution record and my federal conviction.

Q Did he ask you about anything else from your file?

A No.

Q After that interview when was the next time you heard from the parole office?

A The 25th of July.

MS. KAPLAN: I would like this marked as Plaintiff's Exhibit 3.

XXX (Plaintiff's Exhibit 3 marked for identification.)

Q Mr. Mack, I show you this notice dated November 24. Can you identify it for the court?

A It's a denial slip. ME 21376.

MS. SILVERMAN: I have no objection if Plaintiff's wish to put that in evidence, your Honor.

Q Mr. Mack, where did you receive this decision slip?

THE COURT: He just said July 25.

MS. KAPLAN: July 24.

THE COURT: He said he received it on the 25th. You asked him when he next heard from the parole office and he said the 25th.

MS. KAPLAN: Your Honor, this is dated the 24th. Apparently Mr. Mack received it on the next day.

THE COURT: All right. I understand that. What does ME stand for?

THE WITNESS: Maximum Expiration date.

MS. KAPLAN: I would like this introduced into evidence as Plaintiff's Exhibit 3.

MS. SILVERMAN: No objection.

XXX (Plaintiff's Exhibits 3 was received in evidence.)

BY THE COURT:

Q Mr. Mack, do I understand that you were tried and convicted on federal charges?

A Yes.

Q Failure to file income tax?

A Yes.

Q And conspiracy to deal in drugs?

A Yes, sir.

Q When were those convictions?

A March, 1973 and June of 19 -- July,1973.

Q Did you serve any time?

A I served 27 months and was paroled.

Q You served 27 months?

A Yes.

Q You served from March, 1972, you served 27 months starting in March?

A Yes.

Q When did you get out?

A I was paroled in April to the state, April 18th. I haven't been on the streets yet. I was paroled to the

state.

BY MS. KAPLAN:

Q Mr. Mack, did you receive any other papers with that denial slip?

A No, I did not.

Q Did you receive any written notice of the reasons for your denial?

A No.

Q Did you ask the parole officer if there was one that you could write to for the reasons for the denial?

A Yes. He told me I could write to Regan in Albany. He said, but if you say I could -- he told me I could write Regan's board in Albany.

Q Did you write to Mr. Regan's board in Albany?

A Yes.

Q Did you receive any response?

A No, I didn't, but Mr. Hardy did.

Q Did Parole Officer Hardy notify you when he received that slip?

A Yes.

Q How did he notify you?

A He put me on a call out slip to come to his office.

Q Did he give you the reasons for the denial?

A He read the letter --

MS. SILVERMAN: Objection.

THE COURT: What are you objecting to?

MS. SILVERMAN: They were talking about the slip, and now she just asked him if Mr. Hardy gave him reasons for his denial. I don't know what the denial was.

THE COURT: The denial came in July and then Mr. Mack is now testifying, I don't know when he did it, but he wrote a letter to Mr. Regan and Mr. Regan responded to that letter asking why he was denied. And that letter is now, I gather, being read to him by Mr. Hardy or somebody.

MS. SILVERMAN: That latter statement, of course, your Honor, may be absolutely correct, but that wasn't what I gathered from the question.

THE COURT: Am I correct?

THE WITNESS: Yes.

THE COURT: When did you write the letter to Mr. Regan?

THE WITNESS: I wrote the letter in August.

THE COURT: When were you called down to see Mr. Hardy?

THE WITNESS: The last week in August.

THE COURT: All right. Let's proceed.

Q Did Mr. Hardy show you the letter he received from Mr. Regan?

A Yes, he did.

Q Did Mr. Hardy tell you what the reasons for your denial had been?

MS. SILVERMAN: Objection.

THE COURT: If he showed him the letter, why don't we find out what was in the letter, Ms. Kaplan.

MS. KAPLAN: I beg your pardon, your Honor.

Q What did the letter say?

A He read the letter to me --

MS. SILVERMAN: Objection, your Honor. Do we have the letter? Is it currently available? He is about to testify to the contents.

THE COURT: You probably know more about that than anybody else, Ms. Silverman.

MS. SILVERMAN: Yes, sir.

THE COURT: What was in the letter?

THE WITNESS: I asked him, he said he doesn't have to give me any reason for the denial; if I wanted reason, I should go into the federal courts.

THE COURT: That is what the letter from Mr. Regan is supposed to have said to you?

THE WITNESS: Yes. That's what he read the letter off to me. Mr. Hardy read the letter to me. He said he didn't have to give me any reason. If I wanted a reason, I

should go to the federal court.

THE COURT: Mr. Regan is the chairman or a member of the parole board?

MS. SILVERMAN: He was the chairman at that time.

THE COURT: And your testimony is that he wrote a letter like that to you?

THE WITNESS: That is what he wrote to me.

MS. KAPLAN: Thank you, Mr. Mack. No further questions.

CROSS-EXAMINATION

BY MS. SILVERMAN:

Q Do you have a letter that Mr. Regan wrote to you?

A He wrote it to Mr. Hardy, not to me.

Q So you were never given the letter?

A No.

MS. SILVERMAN: No further questions, your Honor.

THE COURT: Thank you very much.

(Witness excused.)

MR. JOHNSON: Your Honor, we have no further witnesses here. We are advised by Ms. Silverman that Raymond Dorsey would be appearing, and we served a subpoena for the files of these particular applicants, on Friday; and any and all regulations, directives or procedures relating to conditional release. I don't believe he is here. He must

be caught up by the snowstorm or something. Ms. Silverman tried to reach him during the recess but was unsuccessful.

MS. SILVERMAN: I had also planned to call Mr. Dorsey. His secretary is trying to check what the situation is, and I plan to give her a call when we take the luncheon break.

I have two other witnesses present, your Honor. They have just come down from Albany. I would make two alternative requests: One, that I be given five minutes to talk with them and then start or, two, that we start at 1:30. I don't anticipate being more than a half hour with them, and that would conclude the case. I don't know what the story is with Mr. Dorsey, I have to check. But even if Mr. Dorsey was here, I take it we would finish by the end of the day.

THE COURT: All right. Either one of the suggestions is reasonable.

MS. SILVERMAN: Then I would opt for 12:30 to break to 1:30.

THE COURT: All right. I was about to grant that. We will resume at 1:30.

(Luncheon recess.)

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AFTERNOON SESSION - 1:30 P.M.

MS. SILVERMAN: Your Honor, I would call Mr. Kavanaugh, please.

MS. KAPLAN: Your Honor, may I interrupt for just a moment. There are a few procedurial matters that I would like to take up with you. The first is a request for a copy of the transcript. Our plaintiffs are not able to pay for the transcript, and if you will order it for our use, we'd appreciate it.

THE COURT: All right.

LAWRENCE V. KAVANAUGH, having been called as a witness on behalf of the defendant, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MS. SILVERMAN:

Q Mr. Kavanaugh, would you please state your current occupation?

A I am assistant director of Field Operations, Division of Parole, Department of Correctional Services, State of New York.

Q How long have you been with the Department of Parole?

A Since March of 1942.

Q You are currently employed by the Department of Correctional Services; is that correct?

A That's correct.

Q During your time with the Department of Correction or Parole have you had any other titles other than the assistant director of Field Operations?

A Yes. I was a parole officer until 1947, when I became area director for Syracuse. And then, 1955, I became area director in Buffalo.

Q As assistant director of Field Operations would you explain, please, what are the field operations of the Division of Parole?

A Actually, in the division of parole there are two partial staffs. Part of the staff was in the facilities throughout the state, and this was called the institutional staff. I am in the field staff, and we have responsibilities for all the staffs throughout the state, including all officers in the state, and the carrying out of their work.

Q In that connection do the parole officers and the staff of which you have charge, are they involved in the conditional release program for inmates in local penitentiarie serving one year definite term or less?

A That's right. Penitentiaries and jails throughout the state.

Q What is the connection of your staff with these types of inmates? In other words, what function do your officers serve vis-a-vis the inmates who are eligible for the conditional release?

A So far as conditional release from county jail at penitentiaries is concerned, the field staff does the whole operation, not only what is normally done by the field staff to make investigations concerning inmates in state correctional facilities, but they also serve as the institutional parole officers for the county jails and penitentiaries.

Q What is the conditional release program for inmates serving a term of one year or less definite sentences?

A Inmates committed to any local correctional system, including the department of corrections in the City of New York, the five penitentiaries in the state and the 58 county jails are eligibile for conditional release after they serve -- if they got a 90 day sentence and after they have served 60 days of the sentence.

Q How does jail time affect the eligibility period?

A I said that they are eligible for conditional release after 60 days. So far as the jail time is concerned, they receive credit on the 60 days rating time up to 30 days, which, in addition, if an inmate has 30 days jail time, then we have an additional 30 days beyond that to complete the

investigation concerning the man or woman.

Q Is it possible that you will not ascertain his eligibility, however, until he has served at least 30 days jail time?

A We are totally dependent on the local sheriffs and superintendent of county penitentiaries to notify us concerning eligible inmates committed to their facility. Sometimes they do not notify us immediately. They have written instructions and directions to report the commitment of any inmate to a county penitentiary or jail immediately to us. This doesn't always happen.

Q When was this conditional release program for inmates in local penitentiaries initiated?

A As of September 1st, 1967, the parole department of the City of New York was abolished. The state law at that time provided for this service to Rikers Island and also to the jails and penitentiaries of the State of New York, so the date is September 1st, 1967.

Q You testified that you were notified by the local sheriff or whoever is in charge, I guess, of these local facilities of the receipt of an inmate who would beeligible for the program. What happens after you are so notified?

A As soon as we are notified a parole officer goes to the particular jail or penitentiary and interviews the

inmate to advise him of the program, to give him some information, written information concerning the program and ask him whether he cares to make an application for conditional release. The law does specifically say that he must make an application for conditional release. If he does, we provide the form for him which he will subscribe his signature indicating his wish to be considered for conditional release.

Q Do you require that your parole officers inform him of the interaction of prior jail time with the eligibility date?

A We require our parole officers to tell them everything that there is to be known concerning the program. This is the only way that the inmate has the best understanding. This is one way in which we build confidence in ourselves of the inmate, by telling him totally about the program.

Q What does the parole officer do after he contacts the inmate? What is the interaction?

A If the inmate signs the application for conditional release, then the parole officer makes an investigation. Before he starts to make the investigation, there is available a probation report in many of the counties and some of the counties they are not available. But the report itself includes an introduction, stating our source of

information, then concerning the criminal record, present offense, previous offenses, and a personal history, and a family history.

Then community attitude; and after that, what are the inmates' desires and plans for the future. And then any parole program that is available to him in the way of residence and employment.

Q May the potential conditional releasee include anything in the report or the file that is given to a parole commissioner?

A The potential candidate for parole can include anything that he wants to. If he has any documents to give to the parole officer, this would be included in the folder given to the commission. If he has any letters, if he has employers that will say they will hire him, if he has anything to recommend him, it will be in the report. All the positive things concerning the inmate that we can learn about him is included in the report, and all the other things that may be negative are included in order that the board of parole may best understand the particular inmate as possible.

Q Does the parole officer, when he interviews the inmate, does he discuss any information he has from the folder that he has with him regarding the inmate?

THE COURT: I don't understand that question.

All these questions, I really don't think I understand. Are you asking him what are the procedures, what are they supposed to do, what are their instructions?

MS. SILVERMAN: Yes, your Honor. In other words, Mr. Kavanaugh is the assistant director of field operations and has --

THE COURT: I now understand. The question you are framing, you are asking him as if he was there on every interview and was aware of what they actually did. Now I understand what you are doing. You may proceed. I think there is a pending question.

Q I will start again.

Is it the requirement of the department that the parole officers discuss with the parolee the information that they have from the parolee's background, from either the probation department or from his prior arrest record? Are they supposed to go over that withthe inmate?

A Well, they do go over it. They might not necessarily identify the source of information, but in order to get a good understanding, a clear understanding of the particular inmate, they do discuss everything that is significant and let him express himself --

MR. JOHNSON: Objection.

THE COURT: I don't think you can tell us that,

Mr. Kavanaugh. The only thing you can tell us, I believe, is what your instructions, if there are any, to them are and whatever experience you may have in seeing an interview. But you can't tell us that. At least, if you can tell us that, if you can tell us that, I'm not that inclined to accept it because I don't believe that you can testify to it. You weren't on every interview.

THE WITNESS: No, I cannot testify that I was at the interview, but these are the instructions in the field manual, your Honor.

MS. SILVERMAN: I prefaced it, that these were his instructions.

Q Are your parole officers instructed to make an outside investigation or any investigation on the potential parolee?

A Yes, they are.

THE COURT: Are the people who have testified here that these plaintiffs and witness testified at Rikers Island as having had an orientation and been advised of this program, are those people in your employ?

THE WITNESS: No, they are under the direction of the director of institutional services at Rikers Island.

MS. KAPLAN: Your Honor, I move to strike the testimony as unrelated to the issues at hand. This suit is

related solely to Rikers Island, and Mr. Kavanaugh's testimony is therefore inapplicable.

THE COURT: Are you only concerned with what goes on in Rikers Island? Is that what you are directed to? You are not concerned with the totality of the 60-day conditional release program?

MS. KAPLAN: Yes, of course, we are, your Honor. But the testimony that Mr. Kavanaugh has given pertains to the upstate institutions which are not the subject of this suit. If he can testify to the program that does concern Rikers, then his testimony will be relevant.

THE COURT: In other words, this case only concerns those inmates who have been sentenced to serve time at Rikers Island?

MS. SILVERMAN: That is correct.

THE COURT: All right. Then I think there is something to that, Ms. Silverman.

MS. SILVERMAN: Your Honor, actually I have Mr. Kavanaugh, I have gone into this little background really to apprise the court of exactly what goes on with respect to this statute. I will pass on then. I hoped I have qualified Mr. Kavanaugh as something of an expert, with respect to the general functions of the parole board.

THE COURT: Yes, but I want to know, Mr. Kavanaugh

has given us some testimony about what parole officers who work under him do and what they are supposed to do, and so forth. What I want to know is if we are engaged in what happened at Rikers Island, from somebody who knows what happens there. What we have there apparently is that a man is at Rikers Island, who as far as these claimants are concerned, they think the man is connected with the parole office. When they come in, a few days after they come in they are told about the program. There's been testimony that after they made the application they heard nothing of it since, from anyone.

MS. SILVERMAN: There is also another issue in the lawsuit and that was with respect to potential parolees seeing a parole commissioner personally. And Mr. Kavanaugh, I hope, will shed some light on the difficulties that such a ruling would entail. So if I may continue, I think that the rest of it will tie in. Also, I think Mr. Kavanaugh is qualified to give general information as to what the procedures of the parole board are with respect to the conditional release program for definite termers.

THE COURT: All right.

Q After there is an investigation in the report by a parole officer, then what happens to the parolee's file?

A The entire file is sent to the board of parole.

Q What happens then?

A The board of parole decides whether or not conditional release shouldbe granted or whether it should be deferred.

Q Granted or deferred?

A Or denied.

Q There are three possible dispositions then.

THE COURT: How do they make that decision? What is the process? They get the file. How many commissioners get the file? How many commissioners are needed to make a determination?

THE WITNESS: So far as local parole upstate is concerned, one commissioner gets the file.

THE COURT: He makes the decision?

THE WITNESS: He makes the decision.

THE COURT: Do you know what the procedure is with regard to those who are subject to the program at Rikers Island?

THE WITNESS: At the present time the folder is sent over to the New York office and one commissioner acts upon it at the present time.

THE COURT: One commissioner also?

THE WITNESS: That is correct. This has been a change because of the great volume of work that the com-

missioners have had.

Q Does the parole commissioner who receives the file and makes the decision with respect to an applicant, does he set forth the reasons if there is a denial?

A He does now, yes.

Q When was that instituted?

A About August 4th.

Q Is the parolee thereafter given a statement of the reasons for the denial, in writing?

A Yes, he is.

Q If there is a denial does an applicant have any recourse?

A Yes, he does.

Q What is that?

A An applicant may write to the chairman of the board of parole from the central office, and he can state in his letter whatever reasons he thinks should be considered in changing the original denial and granting conditional release.

THE COURT: You have moved off of point, it seems to me. That is one of the critical points in this case, and you moved very swiftly to something else, Ms. Silverman.

XXX BY THE COURT:

Q How is change effectuated, when they began to give

reasons for the denial? You said it occurred in August.

A There has been legislation to that effect.

Q In any event, your testimony is that since sometime in August these 60-day applications, action on these 60-days that the board of parole -- whatdo you call it, Ms. Silverman, board or commission, or what?

MS. SILVERMAN: In this case actually a single commissioner acting.

THE COURT: But he is acting for what?

MS. SILVERMAN: For the board of parole.

Q All right. The board of parole now indicates why it is deferred, why it is denied?

A Yes. This is in conformity with the legislation passed by the State Legislature.

THE COURT: These reasons are supposed to be told to the applicant?

A These reasons are given to the applicant in writing

Q Are sent directly to the applicant?

A That's correct.

Q And that is present procedure?

A That is the procedure.

MR. JOHNSON: Your Honor, I object. There's been some confusion here about whether he is testifying about procedures upstate or at Rikers Island.

THE COURT: You can object to it. Let's qualify it. There's no reason to object to that. I need as much information as I can get. Are you saying that -- do you know whether or not this applies to the whole state?

THE WITNESS: This applies everywhere. The legislature has mandated this. The board has acted in conformity with the direction of the legislature.

Q I think there has been some testimony here by people who have seen the boards since August, and I think there's been some testimony of persons who have been denied since August.

A I was not here all morning, your Honor.

MS. SILVERMAN: I thought, your Honor, that everybody who testified this morning had been pre-- this change in this procedure.

THE COURT: You may be right.

MS. SILVERMAN: I can't swear to it, but I think so.

THE COURT: You may be right. Somebody testified about --

MS. SILVERMAN: Writing a letter, I recall. But I believe that was prior to August.

THE COURT: That is true. That was Mr. Zambuto, wrote a letter in August. All right, let's proceed.

BY MS. SILVERMAN:

Q Mr. Kavanaugh, as the assistant director of field operations with the department of parole in charge of all counties with the exception of New York City, is it possible for your staff ro complete all reports to a commissioner within 60 days with respect to the applicants for conditional release?

MR. JOHNSON: Objection, your Honor.

THE COURT: That is a very long question. Read it back.

MS. SILVERMAN: Why don't I withdraw it and try a new one.

THE COURT: Good.

Q Mr. Kavanaugh, at the current time is your staff able to complete all applications to the board of parole for conditional release within 60 days?

MR. JOHNSON: Objection, your Honor.

THE COURT: Why would you object to that?

MR. JOHNSON: I don't see what bearing it has on this lawsuit.

THE COURT: It has considerable bearing on this lawsuit. If he says no, then they can't complete it, then it seems to me that is a concession. If he says yes, then you want to know why he hasn't done your case. I don't under-

stand the objection.

A Generally the staff can complete them. However, sometimes when a man has 30 days jail time, the sheriff or superintendent are late in getting notice to us and it is an involved investigation that does take more than the additional 30 days. Sometimes some of these investigation are very difficult. Upstate we do not have the probation, the complete probation examinations available to us that are generally available in New York City. So the investigation upstate is much more detailed and time consuming.

Q What does it mean if you can't complete it? I don't understand that, Mr. Kavanaugh. If you can't complete the investigation within the time that the man is supposed to be allowed to have his conditional release, then in effect the law is a dead letter, doesn't mean anything, does it?

MS. SILVERMAN: Your Honor, we would read --

THE COURT: No, I am asking Mr. Kavanaugh.

THE WITNESS: It all depends on how you interpret it. I do not feel it because these investigations are done just as expeditiously as humanly possible. Maybe the law is much too limited in some exceptional cases.

THE COURT: It may well be. But the law says the man is entitled to conditional release within 60 days,

and you can't, if your staff is unable to complete a report in that period of time; then as far as I am concerned, he is not getting what the law says he is entitled to, is he?

THE WITNESS: I suppose the exact interpretation would fall into that. But I do want to bring to the court's attention that this is an exceptional case.

THE COURT: I understand. Your testimony is that in most cases you can complete on time. But there are some cases that you can't, it seems to me that could be the situation. What can you do in most cases that you can?

THE WITNESS: Those cases we complete the investigation just as quickly as possible.

THE COURT: Have you made any inventory of how many of those cases you have not been able to do within 60 days?

THE WITNESS: No, I have not made any exact inventory of it, but the number is very small, because up to this point I haven't had any brought to my attention.

Q Mr. Kavanaugh, I asked you to bring with you a table setting forth the number of applicants that there are for conditional release. Do you have that table with you?

A This is for upstate plus Long Island, including Nassau and Suffolk counties.

Q Right. That table?

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(Handing.)

MS. SILVERMAN: May I have that marked for identification.

MS. KAPLAN: I object to that. I don't see what relevancy that has to do with a lawsuit involving Rikers Island inmates. This includes everyone but Rikers Island.

THE COURT: I was about to ask the same question.

MS. SILVERMAN: Ms. Kaplan among other things is seeking a lawsuit whereby all people should appear personally before the parole board. I am trying to show your Honor how many thousands of people that would entail, to see the parole board each year. If we lose the case here these people would presumable be the next ones to come or they certainly would be affected. I don't think Ms. Kaplan would take position we just should give Rikers Island the appearance before the parole board.

MS. KAPLAN: The presumption of what would happen is not what we should base the ruling on.

THE COURT: You have the right to make that objection, but apparently it is a foolish objection. You are making a technical objection. What difference does it make? It's not hurting you to have it in evidence.

XXX (Defendant's Exhibit A marked for identification.)

Q I show you Defendant's Exhibit A for identifi-

A 929 were denied conditional release by the board of parole and 559 were granted conditional release.

Q These figures exclude Rikers Island; is that correct?

A That's correct.

Q Would you now direct your attention to Defendant's Exhibit B, the other sheet of paper. Could you just tell us very briefly what that table represents?

A Well, first of all, this is for the calendar year 1974, from January 1, 1974 through December 31, 1974. And this is the decisions made by the board of parole regarding releases of inmates of local correctional institutions serving definite sentences. The top statistic in this table is in New York City institutions --

Q What is that statistic?

A Total applications, 1196.

Q What were the dispositions?

A 280 were approved, 916 were denied.

Q And the bottom figure? The figure with respect to upstate counties?

A Then the bottom two groups are the county penitentaries, and then the county jails. Instead of having the totals at the bottom here, the totals are at the top, including upstate and New York City conditional releases.

cation, Mr. Kavanaugh, and I ask you if the records reflected therein or the figures reflected therein, is it the normal business of the board of parole to keep such records?

A Yes, it is.

Q Is this such a record kept in the normal course of the business operations of the department of parole?

A Yes, it is.

MS. SILVERMAN: I would like to offer that into evidence, your Honor.

THE COURT: Do you have anything about New York City?

MS. SILVERMAN: We have further records on that, your Honor.

(Pause.)

THE COURT: Do you have the same information for New York City?

THE WITNESS: We have the same information but it is not set up the same way. Some totals are available. We have different totals here, we only have three for New York.

MS. SILVERMAN: Let me mark this one too.

XXX (Defendant's Exhibit B marked for identification.)

MS. SILVERMAN: Your Honor, I offer Exhibits A and B into evidence at this time.

THE COURT: I gather there is no objection.

MS. SILVERMAN: There is an objection to A, there is no objection to B; is that right?

MS. KAPLAN: Yes.

THE COURT: They are received.

(Defendant's Exhibits A and B were received in evidence.)

xxx

Q Directing your attention to Defendant's Exhibit A, Mr. Kavanaugh, could you explain just briefly what that table is.

A There is two tables on here. One is a report of conditional releases from, it says here July 31. Actually, it's August 1, 1975 through August 31, 1975. That is the top table for the month of August, 1975. Then below is a composite report for the 12 months period from September 1st, 1974 through August 31, 1975.

Q From those figures could you please tell us how many applications there were for conditional release during those periods specified?

A Of 2773 who were eligible, 1738 applied. Of the 1738, 235 withdrew their applications before the investigation was completed.

Q What was this position of the remaining applications?

Q What is the total for the state?

A The total applications for the state for the year 1974 was 2578. The total approved was 746. The total denied was 1832.

MS. SILVERMAN: Thank you.

Q You told us earlier that your parole officers service the applicants for conditional release from the local penitentaries and jails throughout the state with respect to Rikers Island, is that correct?

A Yes.

Q How many local jails and/or penitentaries are there in the state?

A There are 58.

MS. KAPLAN: Objection, your Honor.

THE COURT: It's been answered.

Q Do your officers visit these institutions?

A When they are notified by the superintendent or the sheriff that there is a man committed to one of these institutions who might be eligible for conditional release, our officers do visit the facilities.

Q Does the state division of parole have correctional officers staff to bring inmates to you?

A No.

Q Turning to another subject briefly, would you

please explain to the court the educational and other requirements for an individual to be a parole officer?

A For an individual to be a parole officer he must only have a Bachelor's degree, but also one of several Masters' degrees. Or if he only has a Bachelor's degree, he must have three years of qualifying experience.

Q What is qualifying experience?

A It's social work in an acceptable agency.

Q For any specific period of time?

A For three years.

MS. SILVERMAN: No further questions.

XXX

BY THE COURT:

Q How many people work under you?

A I will give you a ballpark figure. About 500; 450 to 500.

Q Howmany of those 450 or 500 are in the category of parole officers that have anything to do with the investigations about conditional release?

A May I make a distinction right off the bat. Our New York Office services Westchester and Rockland County. So to some extent our New York Office, which has about 275 professional people, do service these counties. However, only a small fractions of these 275 service these counties. The rest of the parole staff in the state service the other

counties. That would be about 125.

Q 125 plus 275?

A That is an approximate figure.

I beg your pardon, your Honor -- yes, that would be approximately right.

Q So that approximately 400 of the people have some connectional with the conditional release program?

A That is right. Yes, except I do want to make the distinction again, the bulk of our staff is in the New York City offices, or offices in New York City. The bulk of the people in New York City don't have anything to do with conditional release investigations because they service only two counties, Westchester and Rockland, and there are two or three people in the office who service these two counties. So by far the bulk of the staff in New York City doesn't get involved in conditional releases as far as penitentaries are concerned.

Q I thought by your testimony you were in charge of parole officers in all the counties outside New York. That is why I asked the question. I thought you didn't have anything to do with New York City?

A I am assistant director of field operations. As such, I am responsible for operations in the entire state. However, insofar as conditional release from local institution

is concerned, I do have responsibility for all the upstate operations plus Nassau and Suffolk County.

So far as Rikers Island is concerned, the investigations are done by the institutional staff at Rikers Island.

THE COURT: Thank you.

MS. KAPLAN: Your Honor, may we have a short recess before cross-examination?

THE COURT: No, there is no recess. You should have been prepared that somebody like this was going to testify.

MS. KAPLAN: All right. I am prepared.

CROSS-EXAMINATION

BY MS. KAPLAN:

Q Mr. Kavanaugh, did I understand you to say about 30 days additional time are granted for investigation where inmates have more than 30 days of jail time accumulated?

A No. Actually, the statute says that a man is eligible for conditional release after 60 days. Therefore, we have to have the investigation done in 60 days. They say that all jail time up to 30 days can be reduced from the 60 days. So actually, if a man has 30 or more jail time in, we only have 30 days in reality to finish the investigation.

Q You also stated that unsuccessful applicants

since August 4, 1975 are given reasons for denial for conditional release; is that correct?

A That's correct. Since August 4, 1975. This is in accordance with the amendment to the statute by the legislature and the governor.

Q Are reasons also given to deferred applicants? You say unsuccessful applicants.

A To the best of my knowledge, yes. I made inquiry last week when I found out I would be here, and all the area supervisors had reported to me that yes, they had been giving reasons in those cases in which there's been a deferral. So to the best of my knowledge, the answer to your question is yes.

Q Were you here for the testimony of Mr. Martin Halpern earlier today?

A No.

Q Is it true that the state parolees with new criminal charges are given revocation hearings with an appearance before the board of parole?

THE COURT: What is that question?

MS. KAPLAN: I will withdraw the question. No further questions, your Honor.

THE COURT: I am looking over my notes and I think I am correct, Ms. Kaplan, there are some people who

testified, one saw a parole officer at the end of August, which was after August 4. Another, I believe, was interviewed in November, and in no instance, I believe I am correct, I know I am correct about the August one, in each instance I believe their answer was they were given no reason for denial.

THE WITNESS: I believe I was here when the one man testified about August. He didn't testify he had a revocation hearing during the month of August. He said he had one earlier, and he testified that subsequently he saw the parole officer and he asked the parole officer what he could do, and he told him he could write to the chairman of the board of parole --

THE COURT: That is a different one. I am aware of that. But there was one who I think testified that he saw a parole officer at the end of August and never learned what was in his file, never knew what was in his file; and apparently his parole was denied at that point. He was never given a reason. I think that is the testimony.

If I am correct, in those two instances, if that has occurred, that is contrary to the regulation.

THE WITNESS: That is contrary to the regulation.

THE COURT: Thank you.

(Witness excused.)

MS. SILVERMAN: Next call Mr. Salo, please.

May I just say one thing, your Honor. Mr. Dorsey was supposed to be here, from Rikers Island, and he really has a similar position that Mr. Kavanaugh has vis-a-vis the parole board at Rikers Island. He hasn't appeared. I spent three hours with him on Thursday and he was supposed to be here this morning. I know the plaintiffs have also subpoenaed him. I just want you to know that I did anticipate having somebody here from Rikers Island to explain the procedures exactly. I called my office to see if he had called me, and I called his office and they called his home, and he was not at home. There seems to be some question where he is. His secretary did call his home.

THE COURT: Snowed under?

MS. SILVERMAN: They tell me lives in Long Island. Just to tell you what's happening.

THE COURT: I would doubt that we are going to be able to close this hearing without some testimony from somebody who can tell us about Rikers Island.

MS. SILVERMAN: Mr. Dorsey is the chief parole officer at Rikers Island and they called him too and they wanted to talk to him too.

THE COURT: We will be through here in not too long, and somebody find out where Mr. Dorsey is, and we will

appear here tomorrow.

J O S E P H J. S A L O, having been called as a witness, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MS. SILVERMAN:

Q Mr. Salo, would you please state your current employment.

A I am the executive secretary to the New York State Parole Board.

Q How long have you been in this capacity with the board of parole?

A Since October 4, 1973.

Q Have you been employed by the division of parole or the Department of Correctional Services at any time prior to that?

A Yes, I have.

Q In what capacities and what years, please?

A I was appointed a guidance counselor November 16, 1960 at Coxsackie and was subsequently employed and promoted to guidance supervisor at Ossining, Woodbourne, and Great Meadow. And in 1959 I transferred and took a position as a parole officer with the New York State Parole Board, and was promoted to executive secretary in 1973.

Q In your current capacity as the executive secretary to the parole board, what are your duties, Mr. Salo?

A I coordinate the parole board schedules for all the major correctional facilities, including the work release facilities, our four camps, as well as coordinating a schedule for our hearing reporters, who travel with the parole board members, assist the chairman's office with the parole board budget.

Q How many commissioners are there currently on the board of parole?

A Eleven.

Q Is that a full complement of commissioners?

A No, it is not.

Q What is a full complement?

A Twelve.

Q Could you please describe the various types of hearings held by the board of parole?

A Yes. A typicalweek, the first week of the month--

Q Without giving us the schedule, just generally setting forth the different types of hearings they would have to sit in on.

A Parole eligibility hearings, establishing minimum period of imprisonment, parole revocation hearings, also conduct the executive clemency hearings for the governor's

office; and do certificates of good conduct and certificates of relief.

Q How many commissioners sit at a time at these different hearings?

A A panel of three.

Q Is it always a panel of three?

A No. One member may proceed to our camps, the four individual camps and establish --

THE COURT: May proceed to what, sir?

THE WITNESS: Our four individual camps. These are work camps where the younger offender is sent to, and the commissioner would establish a minimum on the case sentence. Not for parole eligibility, however.

Q At what types of institutions are there parole board meetings, do the parole commissioners go personally?

A They go to four major correctional facilities throughout the entire state.

Q Could you or would you perhaps explain to the court the usual parole commissioner's schedule during a given month?

A Yes. A commissioner is assigned with two other members, which would consist of a panel of three commissioners. The first week of the month he may go down to Ossining, he would use Monday as a traveling day with the other two

commissioners, plus the two hearing reporters. They would conduct hearings at Ossining, and from Ossining -- in addition to Ossining they would have the TappanWork Release. That is another facility that has been opened there.

From there they would proceed to Bedford, and there is a work release facility also at Bedford, called Taconic. And from Taconic and Bedford they would then proceed to Mattawan and conduct hearings at the Mattawan State Hospital for the elderly and handicapped. There is a separate unit, also, the Fishkill Work Release, which is also at Mattawan.

Concluding possibly on a Thursday or even on a Friday morning, and then commute back to their specified office for additional office work which they would have to cover.

Q This would be one of the panels?

A That would be just one panel.

Q What type of office work would there be for the panel?

A Well, they would have to review cases for declaration of delinquency, review violation reports, recommendation cancellation of delinquencies, review five year discharge recommendations by the parole staff, and also sign R & E reports, residence and employment reports for

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inmates who are waiting to be released to the community on a bonafide program.

Q Are there other panels also sitting at the same time during that first week?

A Yes, there are.

Q Where would they be sitting?

A An additional panel during that same week would also be at Camp Monterrey and Elmira, that would be three panel members with two hearing reporters, and they would have a third panel of three sitting at Ossining correctional facility and at Rikers Island, and one member up at a camp, Camp Summit or Camp Pharsalia.

Q What would the panel at Rikers Island be doing at that point?

A They are conducting violation hearings, some of which are with counsel. Also hearings which are court ordered for revocation hearings.

Q Continue with the general schedule for the rest of the given month. If you have to refresh your recollection, you may do so.

A Yes. May I refer to a calendar I have here, which is a 12 month calendar.

THE COURT: I don't know what this is all about.

MS. SILVERMAN: Your Honor, I received a letter

from the court asking what burdens that would be on the parole board if they had to see these additional 25 applicants personally for conditional release. So Mr. Salo is here to explain to the court the current obligations and functions of the 12 man commission. And he is going to go on and testify that there are approximately 15,000 inmates seen each year in the state.

THE COURT: All right.

A The second week a panel of three board members would proceed to -- and starting at 1:30 on a Monday afternoon, because our hours have expanded and we have more case load, they would proceed to Albion and conduct hearings there, in our work release community facility in Rochester, and after that they proceed on to Attica and terminate the hearings there at the end of the week. That same week we have three members that also proceed to Woodbourne, which is in the Catskills, at 1:30 p. m. on Mondays. After they conclude hearings there, they go to the Eastern Correctional Facility, which was formerly known as Naponach. And then they return back to Green Haven where they conduct nothing but violationhearings.

The third panel that same week would go to Rikers Island on a Tuesday for hearings and on Wednesday to our newly created work release facilities at Edgecomb, Park-

side, and Bay View, here in the city. That is the second week. Did you wish for me to go on to the third week?

Q Maybe you can just tell us what institutions generally the second week in the month.

A The Clinton Correctional Facility up in Plattsburgh, and Dannemora. Albion Correctional Facility. And also Rikers Island and Ossining, which meet every week.

The final week they would be to Green Haven, one panel, and the other panel would go to Great Meadow and Coxsackie and the other panel would go to Rikers and Ossining.

Q I asked you if you had any figures for the month of November on the number of individuals seen by the parole board at these various institutions. Do you have such figures with you?

A Yes.

Q Can you tell the court the number of individuals seen at the various institutions during the month of November?

A At Elmira approximately 125 cases with five parole violators --

Q Over what period of time is the parole board at Elmira?

A They use traveling for Monday. They are there Tuesday, Wednesday, and Friday. They use Friday as a traveling day. At Clinton we had a total of 98 cases, and

at the end of the hearings for the day the board returns to the motel and they have approximately 25 cases which they review for certificates of release and good conduct.

At Albion they had 91 cases, in addition to four parole violation cases.

At Green Haven the had 100 cases plus 30 parole violation cases with counsel, and some without.

At Great Meadow and Coxsackie they had 90 cases with 11 parole violator hearings, and at Coxsackie 90 cases with four parole violator hearings. They are averaging 100 and more at each facility, the hearings.

Q What is the average number of parolees in these various state institutions that appear before the parole board each month, roughly?

A Well, 1000 plus, approximately.

Q May I ask you to identify this, please, Mr. Salo?

A Yes. This is the annual report prepared by the board of parole for the Department of Correctional Services. It's a legislative document, 1975.

Q Is that a document that is normally prepared in the course of the business operations of the department?

A Yes.

MS. SILVERMAN: I would offer that into evidence, your Honor.

XXX (Defendant's Exhibit C marked for identification.)

THE COURT: Come, ladies and gentlemen. I understand this is a report from the New York State Correctional Authority for the year 1975; is that correct?

MS. SILVERMAN: '74, your Honor. '75 isn't available yet.

THE COURT: All right. For the year '74.

MR. JOHNSON: Sorry for the delay. We haven't seen this report. It was requested and we have not received it. We have received parts of it, though.

THE COURT: There is no basis upon which you can object to it.

MR. JOHNSON: No objection.

XXX (Defendant's Exhibit C was received in evidence.)

Q I direct your attention to page 10 at the top. Could you please explain to the court what those two figures at the top of the page mean?

A Yes. They are the total number of parole hearings listed as 13,888. This would include a total of parole eligibility, the board establishing minimums, violation hearings, the total amount.

Q Those people that were entitled to or did in fact personally appear before the parole board during 1974?

A That's correct.

Q In your experience in scheduling the hearings, Mr. Salo, has the number changed in any way for 1975?

A I tried to get figures for 1975. They didn't have them available. But I would assume they are somewhat higher.

MR. JOHNSON: Objection.

THE COURT: On what basis?

THE WITNESS: We have opened up additional correctional facilities. Woodbourne, which is the last facility, and some of our established facilities are overcrowded now upstate.

THE COURT: You have more inmates in state facilities now than you did in 1973; is that what you are saying?

THE WITNESS: I can only assume so. I'm not positive.

Q Would you identify this document, please, Mr. Salo?

A Yes. This document is the parole board hearing schedule which was prepared by my office from January through December for 1974, in this particular case. This gives all the legal holidays. It also lists all the dates for the parole board business meetings which are conducted each month, and the weeks; there are four approximately every

year, where there are no major board hearings conducted.

Q Just explain generally the other pages?

A The other pages are a listing of all the correctional facilities showing what particular institutions are grouped together for any particular parole panel.

Q Is that the calendar for the --

A For the 12 months.

MS. SILVERMAN: Would you mark this for identification.

XXX (Defendant's Exhibit D marked for identification.)

Q Is it in the normal course of the business of the department to prepare this report?

A Yes.

Q Or rather, that calendar. Is this report prepared in the course of those operations?

A Yes.

MS. SILVERMAN: I would like to offer that in evidence as well, your Honor.

MR. JOHNSON: No objection, your Honor.

XXX (Defendant's Exhibit D was received in evidence.)

Q I noted on this schedule that a day is left for traveling. Where do the different parole commissioners come from? Are they all from one place?

A There are six commissioners that are based in what

we refer to as downstate, in the Metropolitan area, going up to Yonkers in Westchester County. The other six commissioners are upstate, from areas such as Syracuse, Buffalo and the western part of the state; as well as the northern part.

Q Could a commissioner who is from downstate service an upstate facility?

A Yes. Very frequently.

Q In other words, there is no relation between where you are stationed and what facility you will go to?

A No. We try to even this out on the assignment so that no particular commissioner goes back to the same institution month after month.

Q In your experience as executive secretary to the parole board in charge of the calendaring of the parole board meetings, if the parole board were to meet the conditional release of the inmate, the applicants for conditional release from local jails and penitentiaries, would it be necessary to increase the working staff of the parole board?

MR. JOHNSON: Objection.

THE COURT: Objection is overruled.

A I can give a rough guess, I would say we would probably have to increase our board membership by three times.

THE COURT: Three times?

THE WITNESS: At least three times.

Q You are talking about the commissioners. I meant the supportive staff.

A I am sorry. I thought you meant the commissioners.

Q I will get to that.

A The parole staff?

Q The supportive staff.

A Yes, we would have to increase.

Q In what fashion?

A Well, the parole staff have to interview them. You are talking about conditional release?

Q Yes.

A They have to cover approximately, I think it would be 62.

THE COURT: But they are already doing that now, aren't they?

MS. SILVERMAN: No, your Honor. There are 62 local penitentiaries and jails throughout the state.

THE COURT: I know, but I understood from Mr. Kavanaugh that the parole officers were interviewing and investigating.

MS. SILVERMAN: I think Mr. Salo is confused by the question, and maybe my question wasn't the best.

Q Would there be any increase in staff such as people that actually travel with the commissioners?

A Yes. It would be most difficult for our hearing reporters. We have currently 9 reporters, two of whom are assigned to each parole panel. We find that they are hard pressed currently because they have to take minutes and transcribe them, and they type them in our central office. So we would have to have a substantial increase in our reporters if they were to provide service elsewhere.

Q In recent years have there been any changes in the parole revocation hearings?

A Well, the parole revocation hearings, the violator is entitled to counsel and also witnesses in his behalf. The parole officer must be present, so that he can be cross-examined, and the violation hearings are much more extensive now than they were. They were I have heard the commissioners say,up to four hours, some of them.

Q Just to conclude, then, Mr. Salo, in your experience as the individual responsible for scheduling the parole board, if the commissioners had to travel to 62 additional local penitentiaries and jails where they currently do not go, would it be possible to make such a schedule?

A Absolutely not.

MR. SILVERMAN: No further questions, your Honor.

THE COURT: I think you better ask some more questions because I am not prepared to accept Mr. Salo's unconditional conclusions without him giving me some reasons for these conclusions. I don't know, you are having him make statements and you are sitting down. I am just telling you, it has no meaning to me for him to say it would require this and this unless you get some reasons.

MS. SILVERMAN: I had hoped we had shown the number of inmates currently seen by the parole board as well as their current schedule.

THE COURT: I understand what you are trying to do, and I appreciate that. And when Mr. Salo is here he certainly seems to me to be able to give us some informed opinions, but I am certainly not going to accept them unless you are going to probe into it some more, unless he can tell us why he's come to this conclusion.

BY MS. SILVERMAN:

Q Would you answer the question as his Honor phrased it?

A Very gladly. We currently have 11 parole board members, one of whom is elected by the other commissioners as chairman. And the chairman's functions and duties are as an administrative officer. His presence is required in central office most of the time. He is not out

on hearings like the other remaining members. Each parole board member is entitled to four weeks of vacation, like anyone else. We found out that the board members could not take their vacation, in fact, some of them have not taken vacation for 1975 because we had one commissioner incapacitated with a heart attack, and he was out of work for nine months. We were operating strictly with ten commissioners.

The first week of the month you need 10 members for all the hearings. Thereafter 9 members for each panel. By sheer numbers we just don't have the board members conduct additional hearings. They are tied up from Monday through Friday.

MS. SILVERMAN: Thank you. I have no further questions, your Honor.

THE COURT: Any questions?

MR. JOHNSON: Just one or two questions, your Honor.

CROSS-EXAMINATION

BY MR. JOHNSON:

Q Mr. Salo, the board currently goes to Rikers Island?

A Yes.

Q How often does it go to Rikers Island?

A They go to Rikers Island every week of the month.

Q It conducts hearings with inmates there, correct, concerning inmates there?

A Yes.

Q And these inmates appear before the Board?

A Yes.

Q You testified that the board conducts numerous types of hearings; conducts parole revocation hearings for parolees who are serving indeterminate sentences; correct?

A Yes.

Q Does it also hold conditional release hearings for conditional releasees who are serving definite sentences as well?

A Yes. When the violator requests a hearing, the commissioner is made available.

Q At those hearings the parolees appear personally, do they not?

A Yes.

Q I want to address myself to the case of parolees serving indeterminate sentences who have been charged with violations of the conditions of their parole. They are entitled to a revocation hearing, correct?

A That's correct.

Q Isn't it true that some of these inmates are housed at local correctional institutions awaiting trial on

new charges?

A That's correct.

Q And they are provided hearings? These persons are, if they so indicated, provided final parole revocation hearings?

A That's correct. They are brought into the major correctional facility where the board is sitting, for a one day hearing. They will come in for the same day and after the hearing is concluded they are taken out to the local county jail, if that is where they are housed.

Q And they are granted an appearance before the board of parole?

A Yes, they are.

Q Let's take the case of parolees or conditional releasees on conditional release from definite sentences. If they are charged with violations of their conditional release, is it not true that if they so request they are granted a hearing before a single commissioner?

A Yes.

Q And that they appear at that hearing?

A I can only tell you my own experience from upstate. Upstate our board member will conduct the hearing where it is required.

Q And that conditional releasee appears personally

before that commissioner?

A Yes.

Q And prior to that hearing that conditional releasee who is accused of a violation is housed in a local correctional institution; correct?

A Yes.

Q Mr. Salo, with regard to the inmates who are housed at Rikers Island, if a parolee serving an indeterminate sentence is charged with a violation of the terms and conditions of his parole and is awaiting trial on these charges, may he request a final parole revocation hearing?

A That I am not certain. I think the director of institutional services would be more qualified to answer that than I.

Q Do you know if final parole revocation hearings are conducted at Rikers are by the board of parole?

A Yes.

Q For parolees charged with the violation of their parole, or who are waiting trial in New York City?

A I am not certain whether awaiting trial, at Rikers Island. I am not too well acquainted with Rikers Island itself.

MR. JOHNSON: No further questions.

BY THE COURT:

Q What kinds of hearings does the parole board conduct at the present time in which the inmate will personally appeal?

A Where the court has not imposed a minimum but only a maximum, the board must see that inmates in the 10th month from the date of the reception, to establish a minimum on his sentence. He is personally seen by the board. Also --

Q As required by law?

A Yes. Also individuals who are eligible for parole appear in person.

Q After a certain period of time they are eligible for parole and they appear in person?

A Yes.

Q That is three. What's the other?

A Parole violators.

Q They appear in person?

A Yes.

Q What else?

A Inmates who have been held by the board for one reason or another reappear, come back before the parole board. In other words, they may have been held at the time of eligibility once, and then they reappear.

Q What else?

A Those who have applied for executive clemency, that goes through the governor's office. However, those hearings are conducted by the parole board members in private with the inmate. No reporter or anyone else is there.

Q Is that all?

A I would say that covers the gamut.

Q Are all these hearings in which a panel of three sit?

A Yes.

Q All of them?

A Except for the minimums, which they call MPI, minimum period of imprisonment; at the camps they send one commissioner, and that minimum which is established there is reviewed by the full parole board at their business meeting each month.

Q When an inmate is eligible for parole, that is after he's served and -- on the federal side it is roughly one-third of his sentence -- he becomes eligible for parole, those inmates are given hearings?

A Yes, sir.

Q Is that an explicit requirement of state law?

A Yes.

Q What I gather is that these hearings that are

held are pursuant to explicit state law requirements?

A Yes.

Q And you don't hold a hearing on that 60 day conditional release because it is your understanding that there is no such requirement that that be held?

A That's right.

Q Is there any difference, as far as you can see, other than that fact, between an inmate who is eligible for parole after serving one-third of his sentence and one who is eligible for conditional release after 60 days? Is there any difference, other than the time?

A No, I could see no difference.

Q I mean, any difference in the reason other than the law as to why one should have a hearing and the other shouldn't?

MS. SILVERMAN: I am going to object to that question.

THE COURT: You may, but I am sorry, I have the last word, Ms. Silverman.

A Well, the only difference is that in '74 I don't know whether there were 25 or 26 hundred applicants for conditional release. Spread out over 62 counties and for the parole board members --

Q So it's the size of it?

A It's the size and complicity and geographical areas. They just can't traverse the whole state.

Q How does the parole board -- if you can answer it, since you are here as executive secretary, some of these questions that the claimants haven't answered, I would like to have an interest in finding out -- how does the parole board operate, as far as you know, in respect of the handling of these conditional release applications? Do you know how they operate?

A They are brought in by the parole officer into the area office -- I only speak for Albany because I am Albany based, but we have nine other areas across the state. But let's say for the Albany county, and Renssalaer county jail, the parole officer will bring in the cases and he will bring them into the commissioner, and he is available if the commissioner has any questions to ask, in addition to his reviewing the file.

Q The commissioner is in Albany?

A The chairman is in the office. And we also have a commissioner, every commissioner designated for office duty on duty after he's concluded his hearing at the institutions, because there is so much paper work to process, and cases.

Q I guess what I am really trying to find out is

is there any procedure that you know of, how these things are handled? They come into the office, how do they get to commissioner X? I understand commissioner X handles a certain amount of these and commissioner Y handles a certain amount, and so forth. How do they get there?

A In New York we have six commissioners. Two cover the Hempstead area of Long Island, so we have four that are available for the New York office and they will divide the cases up between themselves for review.

Q After each commissioner has individually reviewed the case and made up his mind, and it is his judgment that the conditional release should be granted or denied or deferred, is his decision final or does he consult with the chairman, or don't you know?

A I would say most of the time his decision would be final, but it could be subject to review.

Q I know, but I am just talking about the initial decision.

A The initial decision would be the commissioner's.

Q And then, as Mr. Kavanaugh told us, under the current rule if he denies or defers, he sets that out with his reasons?

A He must give written reasons, yes, sir.

Q How does he do that?

A He will dictate them either on a transcriber or handwrite them out. Some of the board members do. They are typed by the board officer responsible for them. I believe the New York office would be responsible for Rikers Island cases.

Q You are responsible for Albany?

A Yes.

Q Let us talk about Albany.

A Then they are typed onto decision sheets and they are distributed, one to the individual who has applied, along with this personal file and to the parole officer who submitted his case.

Q What does he have before him, the commissioner, when he makes the decision?

A Well, he would have possibly the presentence investigation report, also the parole officer's interview with the inmate, his pre-parole summary, and all of this would include the social history, personal, legal history, what his opportunities are for employment, and what program he is submitting in addition to any recommendations which would be by the legislators, by the judge himself, or interested members of the family, or attorneys.

Q Does the board at the present time, as far as you know, does it have any standard pursuant to which it can

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make its decisions in these areas? Does it have any rules or regulations that these are the things that guide it?

A They look at the offense itself.

Q What I want to know if, is this formalized, or is it an informal procedure?

A No, it's formalized.

Q Where would I find that? I'm now talking about the 60 day people. What are the criteria that guide the board's decision, and if there are criteria, where would I find them if I was interested?

A They have no manual for these criteria as such. But they rely on their experience and on their judgment, as well as a number of factors, some of which are the offense itself, the previous convictions.

Q What I am trying to find out is, is there anything that is either in writing or in rules or regulations or anything that the board will look to in its decision, or is this the kind of guidance and sound judgment, and so forth, that they use on their own?

A Well, it's not only sound guidance, but they do have parole board rules and regulations.

Q That is what I am trying to find out. I guess what I really want to know if whether there are any specific -- if I am on the board, if I am a commissioner and I have a

60-day man before me, where would I be able to, in looking over the man's file and I see various things, where would I be able to find what are the criteria that are supposed to guide me as to whether I say denied, deferred, or granted? I am just new to the system; I have no experience, I want to know. Where do I go?

A Well, we make available not only the institutional manual but the field manual to the commissioner. The duties of parole are defined in there.

Q I am talking about the 60-day?

A But not the 60 days --

Q I am talking about the 60-day release. What I really wanted to know, as I said, I am new, I am ignorant, and I come on the scene and I want to make a sound decision about the 60-day man. And I have his record before me, the crime he's committed, I have his background, I have a pre-sentence report. Other than that, I am culling things to make a decision. What is there that I go to to say this is a criterion which is critical, or this criterion I should look to, and so forth? Is there anything?

A Not as such, other than when they cite the reasons and the facts they have to outline them and they do outline them on all the factors we have indicated.

THE COURT: That's all.

* * *

THE COURT: All right. Proceed.

MS. SILVERMAN: I would call Mr. Raymond Dorsey.

R A Y M O N D E. D O R S E Y, having been called as a witness, and stating his address as 2094 Valentine Avenue, Bronx, New York, 10457, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MS.SILVERMAN:

Q Mr. Dorsey, would you please state your current position.

A Supervising officer, New York State Department of Correctional Services. I am located at Rikers Island Correctional Institution.

Q Are you the highest supervising officer at Rikers Island?

A At Rikers, yes.

Q How long have you held that title?

A I have held the title supervisor officer approximately two years. Prior to that time I was senior parole officer.

Q How long were you a senior parole officer there?

A Since 1967.

Q Prior to 1967 were you employed by the Department of Correctional Services Division of Parole?

A Yes.

Q What is your total years of service with parole?

A 21 years.

Q Is it part of your responsibility to administer the conditional release program at Rikers Island?

A Yes.

Q Could you explain to the court how the conditional release program is explained to the incoming inmates?

A Well, we try to have it within the first week that the inmates are coming in who have a sentence of 91 days or more, up to a year.

MR. JOHNSON: Objection. He is not responding to the question, stating what they tried to do.

Q Mr. Dorsey --

A All right, we try --

THE COURT: Mr. Dorsey, I run this court. You can respond, unless I indicate something to the contrary, you can do so. Because somebody gets up and makes an argument about something doesn't mean something, that your response is incorrect. The objection is overruled. Continue along the lines you were.

A Within one week the inmates are scheduled to have orientation period, which is part of the institutional orientation given to all residents of the facilities and in this group the rights under the conditional release program are explained to them. They are asked whether or not they wish to make application. We keep records as to those people who want to make application, and those who do not want to make application, and subsequently as soon as possible they are interviewed by a parole officer who takes a detailed history of what information they wish to supply to the parole officer, and what information we have available from the probation office which is discussed with them.

Subsequently a report is dictated by the parole officer, is typed up in the stenographic pool, and as soon as possible it is presented to the parole board for their consideration.

THE COURT: What do you mean by as soon as possible?

THE WITNESS: Your Honor, the only way I can answer that question is that based upon the number of inmates who apply, based upon my staff to c.. the completed work and the fact that we cannot submit it before the parole board within the 60 day period because there is always a backlog of cases that we have to give to the commissioner as soon as possible, which would I say as soon as possible, it would average anywhere from between 60 to 90 days.

Q Who is eligible to apply for conditional release? What type of inmate?

THE COURT: What does conditional release mean? Conditional release doesnt mean anything if you can't submit a report until the time has passed, Mr. Dorsey. How does that work? The law doesn't have any effect at all.

THE WITNESS: Your Honor --

THE COURT: You said, and I think I heard you say some place in your response, that it is impossible to submit any information within 60 days because of your back-log. So that what I understand you to be saying is that the people who go to Rikers Island, they may as well not have the 60 day program because it can't be effectuated in any event.

THE WITNESS: Your Honor, I would say it would be extremely difficult for it to be effectuated.

THE COURT: All right. Thank you. That is a frank and honest statement, and I appreciate that.

Q Who is eligible for this program?

A Any resident serving, who had received a sentence of 91 days up to a year.

Q Does jail time have any effect on eligibility date?

A Yes. Because my understanding of the law is that a man is eligible to be considered for conditional release after having served 60 days of his sentence, which includes the jail time.

Q Do inmates come to you with jail time?

A In the majority of cases, yes.

THE COURT: By jail time, I gather it seems to be a term of art; that means time spent in jail before sentence is imposed?

MS. SILVERMAN: Yes, your Honor, because sentence is imposed you don't even know whether he is eligible for the program.

Q How does that affect your program and the investigation of your report?

A Well, I would say this: There are many men who

come to Rikers Island with the sentence, they would be almost immediately eligible to be considered for conditional release on account of jail time.

Q What effect does that have on your time to prepare the report, then, if any?

A I just can't do it and meet the minimum standards that have been set up by our department. I just couldn't do it.

Q How many parole officers are currently under your supervision, Mr. Dorsey?

A I have presently six.

Q What institutions do you service?

A Five.

Q What are those institutions?

A The Manhattan House of Detention for Men --

Q Is that on Rikers Island?

A Yes.

Q In other words, are these five institutions on Rikers Island that you are about to set forth?

A Yes.

THE COURT: Name them anyway.

Q Please.

A New York City Correctional Institution for Men, New York Adolescent Remand Shelter, New York Correctional

Institution for Women, and the other one --

THE COURT: That is three.

THE WITNESS: That is three. I don't know what they call it now, but it used to be the New York Reformatory, which no longer exists, but is used as a housing area for adult sentenced men at the present time. And then I have the Rikers Island Hospital.

Q Could you describe the physical set up of Rikers Island?

A Yes. Rikers Island is an island, of course, the various institutions are separated from each other. You can only get from one institution to another institution by bus, by local bus. The Rikers Island bus will take you from one institution to the other institution. And it only runs at certain intervals, the bus does.

Q Have you completed your answer? Have you completed that portion of your answer?

A Well, the only thing I would say, I would just comment that it is a very time consuming operation getting from one institution to the other institutions.

THE COURT: Have you named all the institutions? I only have three.

MS. SILVERMAN: The old reformatory, the Men's House of Detention, the Women's House -- two are really merged

into one, I think that is what is confusing Mr. Dorsey. And the hospital.

THE COURT: I see.

THE WITNESS: And the Adolescent Remand Shelter.

MS. SILVERMAN: That is the 5th one. I think he mentioned that earlier.

Q Do your officers go to the different buildings when they interview an inmate? Do they travel to the inmate or is the inmate brought to them?

A Sometimes the officers travel to the other institutions because the inmates cannot be brought back to their particular station where their office is. But most times the inmate is brought to the officers.

Q Who brings them?

A New York City Department of Corrections Officers.

Q They are not state employees, are they?

A No, they are not state employees.

Q How do you request that an inmate be brought to a parole officer?

A We must notify the New York City Department of Correction the preceding day that we want a man brought down to our offices at the beginning of the business working day.

Q After you do that, is it automatic, is the inmate normally brought to you?

A The inmate is normally brought to us, yes.

Q Is that a regular procedure or are there times when the inmate does not appear?

A That is a regular procedure, but often, quite often he does not appear.

Q He is not produced as you requested?

A He is not produced for us to interview him?

Q You said you serviced the five buildings on Rikers Island. Do you service any other institutions with respect to the conditional release program of the penal law?

A Yes. The Bronx House of Detention for Men; we also Queens House of Detention for Men, Brooklyn House of Detention for Men, and we also service what is considered to be residential treatment centers. I think there are two of those, to the best of my recollection.

Q Do you service any hospitals outside of Rikers Island?

A Bellevue and Kings County Hospital if there are any.

THE COURT: Taking all those institutions together, I know there are peaks and valleys, but what's the average inmate population over the period we are dealing with?

THE WITNESS: I would estimate it, your Honor, to be around about 3,000 people that ultimately have the right

to apply for a conditional release.

MS. SILVERMAN: Which is a different figure, your Honor, from the total population.

THE COURT: I know. He is not giving me that.

Are you saying that as of today, or is it over a week's time there would be 3,000 people that your staff would have to service under the 60 day program?

THE WITNESS: I would say yes.

THE COURT: Every week you have 3,000 applications?

THE WITNESS: I wouldn't say that because many of the men who come in have year sentences, or even consecutive sentences. I would say that presently in the institution there are 3,000 men that we would be responsible for servicing. Some may go out, some may not. Some may select it, some may not.

MS. SILVERMAN: I think over the year 3,000 people pass through the institution.

THE COURT: Over the year you would be servicing 3,000 men, your six people?

THE WITNESS: I would say so.

Q You testified, Mr. Dorsey, that you have this orientation program and then your parole officer does an interview. What happens after the interview is prepared and the case is ready for some further disposition? It is then

submitted to a parole commissioner; is that correct?

A Yes.

Q Where does that take place?

A Presently it takes place in our New York City office.

Q The total file is brought to the main parole office in New York City; is that correct?

A Yes, each Friday now.

Q Then what happens?

A The commissioner makes a decision.

Q How long does that take?

A I usually don't receive any case files back until around anywhere from Wednesday to Friday, depending upon how fast the commissioners act upon them there.

Q That was the following week; is that correct?

A That is the following week, yes.

THE COURT: Just taking an average, what is in the file that you submit?

MS. SILVERMAN: Your Honor, we are going to get to that. Actually, there is a memorandum that is prepared, which we are going to introduce into evidence.

THE COURT: You will get to that?

MS. SILVERMAN: Yes, your Honor.

THE COURT: All right.

Q Is there any statement made for the inmate after the parole commissioner has acted on his application?

A There was always a statement as to whether the man's case was reviewed and what the decision was, as to whether it was approved or denied or deferred.

Q Is he given a statement of reasons if it is denied or deferred?

A Presently so.

Q Mr. Dorsey, I asked you to bring the form that is used for that statement. Do you have it with you?

A Yes, I do.

MS. SILVERMAN: May we mark this. I think that is E.

XXX (Defendant's Exhibit E marked for identification.)

Q I show you Defendant's Exhibit E, Mr. Dorsey. Is that the form that is used by the commissioner?

A Yes.

MS. SILVERMAN: I would like to offer that into evidence, your Honor.

MR. JOHNSON: No objection, your Honor.

XXX (Defendant's Exhibit E was received in evidence.)

Q Mr. Dorsey, I see on the top of this form there is a parenthesis with a 8/75. What would that indicate, if you know?

A To the best of my knowledge that indicates when the form was promulgated and typed up. I don't know the date it was instituted, actually, though.

Q To your knowledge, Mr. Dorsey, over what period of time has the parole board been giving reasons for denial of conditional release? When did it start, actually?

A About three months. We have been giving reasons about three months.

Q And this is the form that is used?

A Yes.

Q Who is given a copy of this form? Does it go to the inmate directly or his parole officer?

A No, it goes to the inmate or the resident. One is kept in the case file and I believe one is sent to Albany for their records.

Q You told me also, Mr. Dorsey, that you brought a copy of a manual that is given to parole officers for preparing the parole report that goes to the parole commissioner. Do you have that with you?

A This is a photocopy of a section which is used to give guidelines to the parole officers as to how he should prepare his report.

MS. SILVERMAN: May we mark that for identification also.

XXX (Defendant's Exhibit F marked for identification.)

Q I show you Defendant's Exhibit F, Mr. Dorsey, and ask you, is this form distributed to your parole officers?

A Yes.

Q For use in preparing the report?

A Yes.

MS. SILVERMAN: I would like to offer this into evidence, your Honor.

MR. JOHNSON: No objection, your Honor.

XXX (Defendant's Exhibit F was received in evidence.)

Q Handing you Defendant's Exhibit F in evidence, I was wondering if you could explain to the court what exactly is included in the report that the parole officer prepares for the parole commissioner? If you don't need the report, of course, you can just tell the court.

A First of all, I'd like to say to you that in all honesty, this is prepared originally for the states officers --

THE COURT: Don't put that back in your pocket. That is an exhibit.

THE WITNESS: I am sorry.

MS. SILVERMAN: That is the only copy. I think he wants to take it back. I will make a copy for you, Mr. Dorsey.

A As outlined there, we cannot follow it at Rikers

Island as such because it includes various institutional reports that the parole officer should have made available to him, which are not available to us at Rikers Island. It provides that we should have a probation report in every single case, which we don't. It provides extensive medical and/or psychiatric reports which are not provided to us during the period of time that we have to work on such short notice.

Q Are you telling the court that this is the form that is actually used or is basically designed more for a person in a state facility?

A That is the form we use to train new parole officers. It's a basic form that we use and it has to be modified in local situations.

Q So this form is of general applicability?

A Yes.

Q With modifications according to the particular facility or program?

A That's correct.

MR. JOHNSON: Objection, your Honor.

THE COURT: What is the objection?

MR. JOHNSON: Leading the witness.

THE COURT: That's probably true, but I am interested in information at the present time. You have indicated

to me what you don't do at Rikers Island in terms of that report. What do you do? What is on a typical report that you prepare?

THE WITNESS: The information as to the man's name, age --

THE COURT: Personal history?

THE WITNESS: Personal history. Court where he was sentenced, the sentence, the sentencing justice --

THE COURT: Offense?

THE WITNESS: The offense. When he is actually eligible to be considered for conditional release; the amount of jail time that he has and the end of his sentence, which includes the jail time -- which includes the good time, I am sorry, sir. Then the parole officer writes a brief description of the offense which the man has been sent there, the inmate's response to whether or not he feels he was treated fairly or whether he is guilty, whether he denies or admits his crime.

We are given a summary of the man's previous record, and then we go into what we call a social history which gives what we can get from the man or the probation report, if we have one.

Finally, the probation officer's evaluation. Then under conditional release program, we indicate where he

is going to live, or does he have a program, and have a perspective residence, whether he does have a job or perspective offer of a job.

THE COURT: In view of the pressures of time, which I gather you work under, on what basis do you make any evaluation?

THE WITNESS: The parole officer does not really make, under those circumstances, cannot make a strong recommendation either for or against, quite frankly, your Honor. It's left pretty well up to the commissioner to make a decision.

Q If there is a probation report, presentence probation report, is that included in that folder?

A Yes.

Q And submitted to the commissioner?

A Yes.

Q Is there anything else that may be included in the report at the request of the inmate himself?

A Yes. We tell, in the group orientation, we tell-- or at the individual interview -- we tell the inmate that it would be helpful if he has any interested people, to write letters, to send letters, send job offers in, which will be made accessible to the commissioner?

Q And those are included in the file?

A Yes, sir, they are.

BY THE COURT:

Q Am I correct that what the commissioner received, that is included in the file, Mr. Dorsey, is your report of the interview with the inmate, which includes the information that you have indicated, and your evaluation, social history, and so forth? I gather there would also be a presentence report included. That would be part of the file, wouldn't it?

A Yes, sir.

Q And if there any letters that interested people in the community have written about the man, either favorable or derogatory, that would be included?

A Yes.

Q And including any job offers, that would be included?

A Yes.

Q And all this is presented to the commissioner, and your indication is that your staff's evaluation is for the most part neutral; is that correct?

A Yes, sir.

BY MS. SILVERMAN:

Q Showing you Defendant's Exhibit F, Mr. Dorsey, I was wondering if you could point out the things in there

that you do make an attempt or are included with respect to the inmate's at Rikers Island?

A Well, there is to be a detailed description of the present offense, whether or not there are any warrants or outstanding indictments. Then we go into the previous offenses, which we have the NYSIIS report, fingerprint report, and--

Q What would that show, Mr. Dorsey that report?

A If it's accurate and up to date, it will show every time a man has been fingerprinted, the date of arrest and disposition of his case, of that arrest.

Q Thank you.

A And then we have what we call the social history where there is an attempt to gain information about the -- vital information such as place and date of birth, school, marital situation, medical. And then comes the parole officer's evaluation. And finally the parole program. That is about the extent that we can do at Rikers Island.

Q And that is what is applicable in this outline?

A Yes.

THE COURT: What is the parole program you mentioned?

THE WITNESS: I should say conditional release program, which means we have discussed with the man where he

is going to live --

THE COURT: Whether he has a job prospect, and things like that?

THE WITNESS: Yes, your Honor.

MS. SILVERMAN: I have no further questions of Mr. Dorsey.

CROSS-EXAMINATION

BY MR. JOHNSON:

Q Mr. Dorsey, you testified about the layout and the size of Rikers Island. Rikers Island isn't very large itself, is it.

MS. SILVERMAN: I object to that, your Honor.

Q It doesn't cover a very great area, does it?

MS. SILVERMAN: Objection.

THE COURT: Overruled.

A I don't know the size of Rikers Island. The only way I could say this, I wouldn't want to walk from one end to the other end.

Q There is a bus that goes the route of Rikers Island?

A That's correct, sir.

Q That bus takes about 12 minutes to complete its route, isn't that true?

A I would agree with you.

Q And the bus runs about once every 15 or 20 minutes at the maximum?

A Yes, sir.

THE COURT: What's all this got to do with anything?

MR. JOHNSON: Counsel on direct examination indicated it was difficult for Mr. Dorsey and the parole officers to get around Rikers Island, they had to take a bus, it was spread out, or something.

THE COURT: I don't think based on that, but based on the fact that he has six people working and there are a lot of people in there.

Q Mr. Dorsey, isn't it true that the bulk of the applicants for conditional release reside at the New York City Correctional Institution for Men?

THE COURT: What does bulk mean?

Q About 80 percent of them reside there?

A I don't want to avoid your question, but I'd say the larger number of interviews are at the New York City Correctional Institute for Men.

Q Would you say that 80 percent of interviews are done there?

A No, sir, that I can't say. I don't know.

Q You said you serviced other institutions in New

York?

A That's right, sir.

Q You said you serviced the Brooklyn House of Detention; is that correct?

A Yes.

Q Isn't it true that at the Brooklyn House of Detention pretrial detainees are held primarily?

A That's correct, sir.

Q And the same would go for the Queens House of Detention?

A Yes, sir.

Q And the Bronx House of Detention for Men?

A Yes, sir.

Q And the number of sentenced inmates who are at those institutions are there on work release details or some sort of work release; is that correct?

A Yes.

Q That would be a very small number, maybe 100 men total over the course of a year?

A I think the estimation is correct.

Q How many women inmates are there at the New York City Correctional Institution for Women?

A The total figure is probably around 600, including sentenced and non-sentenced.

Q How many of them are sentenced, do you know?

A I'd say half that.

Q About 300?

A About 300, yes.

Q About howmany of them actually apply for a conditional release?

A Over a period of a year?

Q Yes, sir.

A That would be safe to say.

Q How many sentenced inmates are usually in the hospital at one time?

A I don't know, sir.

Q It wouldn't be over 50, would it?

A No, sir.

Q And probably less than a third of those would be applying for a conditional release; is that correct?

A That's correct, sir.

THE COURT: We are now talking about over a period of a year; is that our standard?

Q Would that be over a period of a year, Mr. Dorsey?

A 50 in the hospital? Are we talking about 50 people in the hospital?

MS. SILVERMAN: You said at any given time?

A At any given time?

Q Yes.

A At any given time, no, I don't think it would be 50.

THE COURT: Would it be more?

THE WITNESS: I am only trying to get a gut feeling for the number of people that we do see in the hospital, and I wouldestimate that probably in a year's time we don't see any more than 50 people.

Q And the other institution you referred to, the New York City Adolescent Remand Center, over the course of a year how many inmates do you see there who apply for a conditional release?

A I'd estimate it to be around a hundred.

Q Wouldn't it be true to say, would it be accurate to say thatin 1974 you saw approximately 1200 applicants for conditional release over the course of a year?

A I would say that is very close.

Q So about 900 to a thousand of them would be inmates who are residing at the New York City Correctional Institution for Men; is that correct?

A I think that is safe.

THE COURT: This is a considerably different figure from 3000, Mr. Dorsey.

MS. SILVERMAN: 3,000 were eligible, your Honor,

I thought was his testimony. This is the amount that actually applied.

Q Mr. Dorsey, of these three thousand eligible inmates when they are sentenced, almost all of them are brought to the New York City Correctional Institution for Men for orientation; correct?

A Yes, that is a receiving institution.

Q The other receiving institution would be the women's institution; is that correct?

A Correct.

Q There is an orientation program then held at each institution for the arriving inmates; correct?

A Only at the receiving institutions.

Q Yes, at the two receiving institutions you testified about?

A Yes.

Q At that time they are informed of the conditional release program and told that they may apply for it?

A That's correct, sir.

Q But only about one-half, not even quite one-half of the persons arrives to apply for conditional release at that time, do they?

A About one-half.

Q You have testified that you have a manual,

Defendant's Exhibit F, which you follow or try to follow in pertinent part. You noted that it was written for parole officers and institutional parole officers who conduct interviews at state correctional facilities upstate; is that correct?

MS. SILVERMAN: Objection, your Honor. That was not his testimony. His testimony was it was a general manual for parole officers in training.

MR. JOHNSON: I will withdraw that question, your Honor.

Q Have any regulations or manuals been promulgated regarding this admission of conditional release applications to the board?

A No manuals. I would say from time to time we have received memoranda as to how the cases should be processed, and any changes in the law which there have been.

Q Do you have those memorandums with you?

A No, sir, I do not.

Q Did you review any of those memorandums before you came to court?

A No, I did not.

Q And you did receive a subpoena, did you not, on Friday?

A Yes, sir, I did.

Q Which asked for any and all regulations, procedures and directives respecting conditional release.

A Well, I misread that or read it to mean that I should produce case files of people involved in the particular suit. The memorandum, I may have even lost most of it over a period of seven years or so.

Q When was the last time you received a memorandum concerning conditional release?

A Concerning conditional release was the memorandum introduced in the form that it was put in evidence, instructing me to give reasons in writing to all the inmates that is the last memorandum.

Q Have you ever received any memoranda outlining how interviews are to be conducted by parole officers?

A No, sir.

Q Do you have any regulations or rules that you follow regarding the order in which arriving inmates who request conditional release are interviewed?

A The order?

Q Yes, Mr. Dorsey?

A No. I assign the cases on a random basis to the parole officer.

Q Persons with long jail time aren't interviewed necessarily before persons with no jail time; correct?

A No, sir.

THE COURT: I'm not sure I understand that answer. Do you mean that no, he is not correct in the question or, yes, he is correct? That is, that persons with longer jail time are not interviewed before people who have shorter jail time?

THE WITNESS: I'm saying, sir, that that is not our policy.

Q Interviews are conducted at random?

A Right. And might add, in chronological order.

Q Of their arrival at the institution?

A That's right, sir.

Q Regardless of their jail time?

THE COURT: That puts a different aspect on the problem. I thought you were talking about the sentence to serve, not jail time. Whether he had a long or short sentence. Now you added some other elements.

MR. JOHNSON: I am not sure that has been his testimony, your Honor. I will try to clarify it.

THE COURT: I thought his testimony is they are selected at random without regard to whether the man had a long sentence or short sentence.

Q Isn't it true, Mr. Dorsey, that the interviews are conducted at random without regard to the amount of jail

time an applicant has spent in a city correctional institution before he was sentenced?

A Yes.

THE COURT: And also without regard to the duration of his sentence, that is, what is the eligibility cut off of 60 days, a year?

MR. JOHNSON: The law provides that any inmate serving greater than 90 days is eligible for conditional release.

THE COURT: So without regard to the length of time he is to serve, it is still at random; is that correct?

THE WITNESS: Yes, sir.

THE COURT: A man with a year might be interviewed before one with 90 days.

THE WITNESS: Yes, sir, that's correct.

Q Mr. Dorsey, it was until actually June or July of 1975 that the files was sent to West 40th Street for decision making to a commission, isn't that correct?

THE COURT: West what street?

MR. JOHNSON: Excuse me,I am sorry. I will rephrase the question.

Q Until June or July, 1975, Mr. Dorsey, the commissioners came from Rikers Island to review the files there; is that correct?

A That's correct, sir.

Q And you had witnessed the consideration process in procedures followed by a commissioner when given files; had you not?

A Yes.

Q And the commission takes five or six minutes to go over a file; is that correct?

A I can't say. It depends on the commissioner.

Q On the average, how many files are submitted to a commissioner for decision per week?

A Approximately 35 to 40.

Q And this is how many are usually on the average submitted to a commissioner when the commissioners came personally to Rikers Island to make their decisions?

A I'd estimate anywhere from about 15 per commissioner.

Q About 15 per commissioner?

A Yes.

Q It takes the commissioners about --

THE COURT: 15 did you say?

THE WITNESS: 15 cases would be presented to one commissioner.

Q From your observation it took the commissioners about two to three hours at most for the commissioners to go

through the files?

A Two to four hours. I'd say yes, two to four hours.

Q Was the parole officer who conducted the interview with the applicant ever called by a commissioner?

A No, sir.

MS. SILVERMAN: Is that when it was being done at Rikers Island?

MR. JOHNSON: Yes.

MS. SILVERMAN: Thank you.

Q I would like to get to the interviewing process that your parole officers under your supervision used when interviewing applicants. Do the parole officers show the applicants the papers that are in the file?

A No, sir.

THE COURT: You say did? Are we are talking about the present or in the past?

Q Presently or in the past. Generally when a parole officer is conducting an interview of a conditional release applicant does he or she show the contents of the parole file to the applicant when doing the interview?

A No, sir.

Q Is the applicant ever shown the contents of the file?

A No, sir.

Q This interview is often done before the receipt of all the relevant papers; is it not?

A That is true, sir.

Q So when the parole officer is conducting the interview he is not in receipt of all the papers that go to the board; correct?

A That's correct, sir.

Q Mr. Dorsey, if an inmate had applied for conditional release before September 1, 1975 would he have been given reasons if he had been deferred or denied conditional release?

MS. SILVERMAN: If he had applied before that date?

MR. JOHNSON: Yes.

A No, he would not have been given reasons.

Q If he were to request reasons now, would he be given reasons?

A We are required to give reasons now, and we do.

Q If an inmate who had been denied or deferred conditional release before September 1, 1975 were to ask you today for the reasons for that decision, would you provide him with such reasons?

A I would have no way of knowing

Q Isn't it a fact that the applicants or deferred are not given reasons for the deferral?

A That is not correct, sir.

THE COURT: Since the last three months you give reasons for denial and deferral; is that correct?

THE WITNESS: That is correct, sir.

THE COURT: That statement is made to the applicant; is that correct?

THE WITNESS: Yes.

Q Mr. Dorsey, you sign the reason sheets that are given unsuccessful applicants, do you not, in general?

A Unsuccessful applicants?

Q Mr. Dorsey, since September 1, 1975 when an inmate is denied or deferred a conditional release do you sign the reasons slips that is given to him?

A Yes.

Q So you have had a chance to see a number of them?

A Yes.

Q About how long is the statement usually on these slips?

THE COURT: What difference does that make?

MR. JOHNSON: I would like to get into the adequacy of the reasons and in addition whether the evidence relied on is given the inmate.

THE COURT: It seems to me that they are given -- people are given reasons, and based upon what the denial is, I am not sure you have any constitutional claim that the reason has to be in particular form, if it is clear and based on the decision the commissioners made.

MR. JOHNSON: I think the reason does as a matter of constitutional law have to provide the inmate with enough information so that he can understand what the reasons were.

THE COURT: But the point then is, I would think I'd be in a better position to evaluate that if I were given some and were entered into evidence some statement that had various kinds of reasons. I think it seems to me this is the way you ought to go.

Are there certain forms that are distributed with the reasons on them?

THE WITNESS: Yes, there are certain forms that are distributed.

THE COURT: What are they? How many basic reasons are there?

THE WITNESS: I would estimate that the reasons are given in any where from 3 to 5 sentences.

THE COURT: From 3 to 5 sentences?

THE WITNESS: Yes, sir.

THE COURT: I am not talking about that. I

gather that there are classifications of reasons. How many of them are there? I gather there are some forms that you sign that the commissioner will tell you that --

THE WITNESS: No, sir. They write the reasons out. They write the reasons out that they are denying or deferring. They give them to me or give them to someone in the New York office and they are typed up there, and I just sign the completed statement which is placed in the inmate's folder, and he gets his copy.

THE COURT: From the questions, I was getting a different impression. In other words, each commissioner after he reviewed the file, he says in his own language why he denies it?

THE WITNESS: Yes, sir.

THE COURT: And it might be a proforma, but at least it is not any printed form.

THE WITNESS: No. Excuse me, if I hear your question correctly, thereis no criteria that I know of that parole commissioners use to make a decision to parole or conditionally release or to defer or to hold forth balance of sentence.

THE COURT: I'm not sure that you want to say that, and I want to be sure that that statement is an accurate statement. Are you telling me that there are no standards

that you know of that guide the correction officer in his decision making process?

MS. SILVERMAN: You mean the commissioner, your Honor?

THE COURT: Commissioner. Is that what you are saying?

THE WITNESS: I think there are no written criteria. Of course, as commissioners there have to be standards which they utilize. But there have been no directives to me or the commissioners as to what guidelines should be followed. It's pretty well an individual decision on his part.

THE COURT: There are no written standards as far as you know?

THE WITNESS: As far as I know.

THE COURT: Do you know any oral ones, any practice, custom, useage and practice?

THE WITNESS: I must have to say this: I have to say that conversations that I have heard indicate that the man's previous record does influence the commissioners and the nature of the offense, institutional adjustment, if he's done well in the institution, and what plans he has for the future.

Q In the reason slips, Mr. Dorsey, from your

perusal of them do the commissioners give the evidence that they rely on in coming to their conclusions?

A Do they give evidence?

Q Mr. Dorsey, if a commissioner said that you had a long arrest record, for that reason we would deny you a conditional release, would they state what that arrest record was?

THE COURT: Only from a qualitative standpoint. If the man was arrested seven times for crimes of an assaultive nature, they would list that.

Q In fact, don't often they just put down, you have a long history of arrests and for that reason we feel that your release at this time would be incompatible with the interests of society?

A In many instances that would be correct.

Q And they don't list what those arrests would be?

A No.

Q You testified earlier that when the board of parole and the commissioners were meeting at Rikers Island they never called the interviewing parole officer in during their decision making; is that correct?

A Correct.

Q Currently you say that the commissioners sit in downtown Manhattan and make their decision?

A Yes, sir.

Q Have you ever called the interviewing parole officer when making a decision and asked him questions?

A No, sir.

MS. SILVERMAN: Objection, your Honor.

THE COURT: Overruled.

MS. SILVERMAN: May I be heard on that? I don't see how Mr. Dorsey would know whether a particular parole officer --

THE COURT: Well, he answered. He seems to think he knows and he answered it. He answered it very positively. He doesn't seem to be indecisive about that.

Q You yourself have conducted interviews with inmates, have you not?

A Yes, sir.

Q And you are familiar with the type of history, education, social background of the average inmate in New York City correctional institutions, are you not?

A I'd say so.

Q And it's true that they are not very literate or articulate persons, very often?

A That is true.

Q In fact, many of them have extreme difficulty in writing a letter.

MS. SILVERMAN: Objection, your Honor.

THE COURT: Where do you propose to take me with those questions?

MR. JOHNSON: What I am proposing to show is that in fact the inmates in New York City correctional institutions have difficulty writing letters and that therefore that form of submission of information to the board of parole would be difficult for large numbers of them.

THE COURT: You haven't raised that. That is outside the issue here.

MR. JOHNSON: I think that going to the need for personal appearance is the question of whether there are any substitutes. I think that the defendant's counsel is suggesting that this interview is sufficient, in her testimony through Mr. Dorsey. I am trying to show that in some cases it may not actually be sufficient.

THE COURT: That may be true, but the fact that they are inarticulate is something that doesn't seem to me to be adding anything to the value of an interview.

MR.JOHNSON: I think the question I asked Mr. Dorsey is that they have difficulty writing letters.

THE COURT: I don't think it is going to help me very much. I must confess, I might as well say it, Mr. Dorsey's statement that Rikers Island, the interviewing

parole officer has little time to make any evaluation if to me sufficient indication that the safest way for the inmate to get his case across is through personal interview. The parole officer can't make an evaluation, he really has been denied, it seems to me, a right to put his case before the person making the decision.

The parole officer apparently isn't going to be able to do anything for him. As far as I am concerned, that would be the importance I would place on the interview, based on the present facts.

MR. JOHNSON: I have no further questions, your Honor.

MS. SILVERMAN: I just have a few, your Honor.

REDIRECT EXAMINATION

BY MS. SILVERMAN:

Q Mr. Dorsey, you have testified on direct and on cross that your parole officers interview people in Brooklyn, Queens and Bronx Houses of Detention, as well as in Bellevue and Kings County Hospital?

A Yes.

Q Are the inmates in these institutions brought to Rikers Island for the interview?

A No, they are not.

Q What happens then?

A We have one parole officer assigned to travel back and forth because the difficulty of the New York City Department of Correction, because of their particular problem, their peculiar problems, not being able to deliver people back to the institutions to be interviewed by a parole officer. We have one parole officer or more that visits those places on certain days of the week.

Q How many inmates would he be -- he is traveling and how many inmates does a see as a result of this effort?

A Maybe four or five.

Q Given your expertise, Mr. Dorsey, in the area of applications for conditional release you testified that there are approximately in the range of 3,000 people eligible for conditional release and there is I guess somewhere between a thousand and 1500, maybe it's more than a thousand, maybe 12 or 13 hundred that ultimately apply.

A Yes.

Q What are the reasons that individual doesn't apply or may not apply?

A The chief reason that I have heard is that regardless of the amount of time that they owe when they are conditionally released, they must do one year's supervision under a parole officer, in the streets. This is one of the reasons. The other reason is that they have such a short

sentence, like four months, and the amount of jail time, they will be leaving in two months anyhow, why serve under a parole officer in a community for one year.

Q You testified in I believe it was June or July the procedure changed, that prior to June or July the parole commissioners came to Rikers Island when the applications were reviewed?

A Yes.

Q I take it now the current procedure is to send the files to the New York City office. Is that office in Manhattan?

A Yes.

Q You then said that 35 to 40 applications were sent. How many commissioners are available in the New York City office to review, if you know, these 35 to 40 applications?

MR. JOHNSON: Can we know about the period of time?

A It would have been since the procedure changed.

THE COURT: Since the procedure changed.

A I don't know how to answer your question. The only thing I could say is that there are probably two commissioners on any given day in the New York office, but they just don't do the conditional release cases. They are there

for other reasons.

Q What is the day of the week on which you usually deliver the applications?

A I deliver them on Friday now.

Q And you testified on your direct that you usually receive them back the middle or the end of the following week?

A That's correct.

Q Mr. Dorsey, are you familiar with the reasons why the procedure was changed from reviewing the parole files at Rikers Island and now it is done at the Manhattan office?

A The only reasons that have been given to me orally is because --

MR. JOHNSON: Objection, your Honor.

THE COURT: I think I will have to sustain that. It is the only way he can tell us is by hearsay.

THE WITNESS: That's all. I don't know.

Q You told his Honor that there were no rules or regulations as far as you knew regarding the criteria to be applied by the parole commissioners to the applications for conditional release. I was wondering, when you use that term what did you mean by criteria? Did you mean writing, memorandums that have been promulgated by the department?

A To the commissioners or a manual for commissioners.

Q That is what you meant?

A That is what I meant.

MS. SILVERMAN: No further questions, your Honor.

XXX BY THE COURT:

Q What is it that you seek to ascertain in your interview process? Tell you what you try to do. Have you been given any guidelines that these are the things, from the commissioners, that this is what we want to know, or will help us in our decision making process?

A Yes, that information is covered in the material which is entered in evidence.

Q In other words, whatever is on those exhibits, those are the things that you look to?

A Yes, sir.

Q After you have had the interview, we have had some testimony, maybe I have been misled, that there is an investigation. Is that done at all? Is that done by your staff?

A No, sir.

Q After the interview there is some investigation?

A No, sir.

Q I thought what the parole officer did was to go and find out, like in a pre-sentence report that we get here,

to find out independently as much as he can about the applicant. I gather that you don't do that?

A No, sir.

Q That is followed outside the city?

A Outside, sir.

Q On the average how long would you say is the average time that a parole officer will spend in interviewing an applicant?

A Between a half hour and an hour.

Q I had assumed that your parole officers had responsibility in respect of the inmates, the population, beyond interviews for 60 day release program; is that correct?

A That's correct, sir.

Q What proportion of your work would you say, this is what we are interested in, what proportion would be included? Is that 50 percent of your time, 25 percent of the peoples' time, 75 percent?

A I'd say 50 percent of the time.

Q What else do you do, just broadly?

A Broadly, most of the men after they have been interviewed by the parole officer --

Q No, I mean what does your parole office do other than this process we have been talking about all morning?

Are there other responsibilities in other areas?

A We call them service interviews. They see men to answer any questions regarding what conditional release is, or regarding family or personal problems they might have. The biggest portion of the time is answering questions as to what's going to happen in my conditional release application.

Q I think you still misunderstand me.

A Maybe I'm not hearing correctly. Sorry.

Q Let me go back. I had assumed that the time that your officers had additional duties other than dealing with the release program. Do they? Do they spend 100 percent of the time?

A I would say yes, sir. It all relates to conditional release.

Q The total work of your staff is devoted to what we have been talking about?

A That's right, sir.

Q I was under a different impression. Other than that document that has been submitted into evidence, which is a form of your interview report, your report of interview, have any other criteria or guides come to you from your superiors, whoever they are, whether commissioners or the board?

A None, sir, unless they are related to changes in the law or changes in administrative supervisory procedures.

Q Does the board have you or anybody else on a period basis meet with the commissioners to discuss what they are seeking, what objectives they have in the 60 day release program and what you ought to guide yourself by?

A No, sir.

THE COURT: I think I have enough. Thank you very much.

(Witness excused.)

* * *

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

GUSTAVE ZURAK et al., :

Plaintiffs, : 75 CIV 4918 (R.L.C.)

-against- : STIPULATION

PAUL J. REGAN, et al., :

Defendants. :

----------X

IT IS HEREBY STIPULATED AND AGREED by and between the parties, by their attorneys, that:

1. the fingerprints appearing on the fingerprint card bearing the name Gustave Zurak and the signature Eugene Czubak are not the fingerprints of plaintiff Gustave Zurak and the New York State fingerprint identification report (arrest record) contained in the parole file of plaintiff Gustave Zurak is not the arrest record of plaintiff Zurak (fingerprint cards of Gustave Zurak and Eugene Czubak annexed)

2. the annexed copies are true and accurate copies of the parole file and its contents of Benjamin Santiago, and is admitted as part of the record of the hearing of December 22-23, 1975, as plaintiff's exhibit 5.

Dated: March 19, 1976
New York, New York

GORDON J. JOHNSON
Attorney for Plaintiffs

LOUIS J. LEFKOWITZ, by
ARLENE SILVERMAN, of
Counsel
Attorney for Defendants